

SECOND AMENDMENT TO FACILITY MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO FACILITY MANAGEMENT AGREEMENT (this "Amendment") is effective as of the 6th day of February, 2018 (the "Effective Date"), by and between Austin-Rosewood Community Development Corporation ("Corporation") and SMG.

BACKGROUND

Corporation and SMG are parties to that certain Facility Management Agreement effective as of October 1, 2009 (as amended, the "Management Agreement"), whereby SMG has been retained by Corporation to, among other things, manage, operate and promote the Millennium Youth Entertainment Complex (the "Facility") on the terms provided therein.

By Amendments effective January 31, 2012 and May 10, 2013, Corporation and SMG previously amended the Management Agreement to extend the Management Term through September 30, 2019.

Corporation and SMG now wish to further amend the Management Agreement, to extend the Management Term through September 30, 2024.

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, as of the Effective Date, Corporation and SMG agree as follows:

1. Extension of Term. Per Section 2.3 of the Management Agreement, the term is hereby extended for an additional five year period, commencing October 1, 2019 and ending on September 30, 2024.
2. Effect of Amendment. Except as set forth in this Amendment, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.
3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to otherwise applicable principles of conflicts of law.
4. Counterparts/Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This Amendment, to the extent signed and delivered by means

of a facsimile machine or electronic mail, shall be treated in all manners and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original executed version thereof delivered in person.

5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter this Amendment and to perform its respective obligations hereunder.

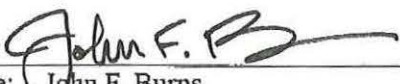
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IN WITNESS THEREOF, this Amendment has been duly executed by the parties on hereto and is effective as of the date first written above.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Name: Sara Kusley, Interim
Title: Chair, ARCDC ACM

SMG

By: 
Name: John F. Burns
Title: Executive Vice President and CFO

IN WITNESS THEREOF, this Amendment has been duly executed by the parties on hereto and is effective as of the date first written above.

AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION

By: [Signature]
Name: Sara Kusley, Interim
Title: Chair, AIRCDC ACM

4-18-18

SMG

By: [Signature]
Name: John F. Burns
Title: Executive Vice President and CFO

DATED: APRIL 17, 2018

AMENDMENT TO FACILITY MANAGEMENT AGREEMENT

THIS AMENDMENT TO FACILITY MANAGEMENT AGREEMENT (this "**Amendment**") is effective as of May 10, 2013, by and between AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION ("**CORPORATION**"), and SMG, a Pennsylvania general partnership ("**SMG**").

BACKGROUND

CORPORATION and SMG are parties to that certain Facility Management Agreement effective as of October 1, 2009, (the "**Management Agreement**"), whereby SMG has been retained by CORPORATION to, among other things, manage, operate and promote the Millennium Youth Entertainment Complex (the "Facility") on the terms provided therein.

As the Management Agreement provides for extensions or renewals thereof, the parties desire to extend the term of the Management Agreement for an additional five year extension, on the terms and conditions contained in this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendment to Management Agreement. Per Section 2.3 of the Management Agreement, the term is hereby extended for an additional five year period, commencing October 1, 2014 and ending on September 30, 2019.

2. Effect of Amendment. Except as amended in paragraph 1 hereof, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.

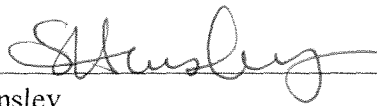
3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to otherwise applicable principles of conflicts of law.



4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute but one and the same agreement. Delivery of a copy of this Amendment bearing an original signature by facsimile transmission or by electronic mail in "portable document format" shall have the same effect as physical delivery of the paper document bearing the original signature.

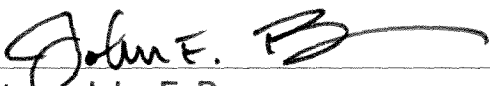
5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter this Amendment and to perform its respective obligations hereunder.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto and is effective as of the day and year first above written.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Sara Hensley
President, Austin-Rosewood Community
Development Corporation

Date: ~~July 12, 2013~~
May 29, 2013 
 SMG

By: 
Name: John F. Burns
Title: Chief Financial Officer

Date: 6-10-13



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 19, 2008

LMI-HHI LTD
Millennium Youth Entertainment Complex
1156 Hargrave St.
Austin, Texas 78702

The City awarded a contract with your company for the OPERATION AND MANAGEMENT OF THE MILLENNIUM YOUTH ENTERTAINMENT COMPLEX for the Parks and Recreation Department in accordance with the referenced solicitation.

Responsible Department:	PARD
Department Contact Person:	Angela Means
Department Contact Email Address:	angela.means@ci.austin.tx.us
Department Contact Telephone:	512-974-6712
Project Name:	MYEC Operations
Contractor Name:	LMI-HHI LTD Millennium Youth Entertainment Complex
Contract Number:	MA -NA080000157
Contract Period:	June 18, 2004 thru June 17, 2009
Extension Options:	Two (2) - Five (5) year extension periods
Requisition Number:	RQM- 8600*0693
Solicitation Number:	
Agenda Item Number:	No.52
Council Approval Date:	9-12-96

A copy of the contract/purchase order will be forwarded by mail.

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Cruz Banda, Buyer II
Purchasing Office
Finance and Administrative Service Department

cc:

2/5/97

(5)

FACILITY MANAGEMENT AGREEMENT

BY AND BETWEEN

LMI/HHI, LTD. d/b/a
LEISURE MANAGEMENT INTERNATIONAL

AND

AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION

FOR

CENTRAL CITY ENTERTAINMENT CENTER

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FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AGREEMENT ("Agreement") is made and entered into effective this 5th day of March, 1997 by and between LMI/HHI, LTD., d/b/a LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership ("Manager") and AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government non-profit corporation ("Corporation").

RECITALS

- a. The City of Austin ("City") owns a 4.978 acre tract of land in East Austin and has entered into a Financing Agreement with Corporation requiring Corporation to construct on such land the Central City Entertainment Center, a public family-oriented entertainment center for youth, which complex with all facilities, machinery, attachments and appurtenances now or hereafter attaching thereto, is hereafter referred to as the "Facility." Section 4.3 of the Financing Agreement, creating certain affirmative covenants from the Corporation to the City, is attached as Exhibit A and is hereby made a part of this Agreement.
- b. It is Corporation's intention that the Facility shall be operated in a professional manner with the objectives of providing a recreational environment for community youth, while attempting to maximize the utilization of and revenues produced by the Facility for the benefit of Corporation and attempting to minimize, to the extent reasonable and practicable, the net cost to Corporation.
- c. Corporation, after reviewing proposals received from private entities for pre-opening consulting and planning services and for post-opening Facility management services, selected Manager as the best qualified party to provide such services for the Facility.
- d. The Manager holds itself out as an organization whose principals have substantial experience and expertise in the management, operation and marketing of public assembly facilities.
- e. Corporation has determined to grant to the Manager, and the Manager has agreed to accept, the authority and responsibility to manage, operate and market the Facility in accordance with the terms of this Agreement.

ARTICLE 1

DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

"Affiliate" of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

"Advertising" shall mean all announcements, acknowledgments, banners, signs, showbills, promotional materials, handouts and promotional product sampling give-aways, and other audio or visual commercial messages displayed, announced or otherwise presented in the Facility including, without limitation, video messages.

"Agreement" shall mean this Facility Management Agreement.

"Authorized Representative" shall mean the individual designated by each party pursuant to Section 2.4.

"Base Operating Expense Amount" shall mean the amount designated in each Budget as the "Base Operating Expense Amount" for the Fiscal Year in question.

"Base Operating Revenue Amount" shall mean the amount designated in the Budget as the "Base Operating Revenue Amount" for the Fiscal Year in question.

"Budget" shall mean any budget to be prepared by Manager and approved by Corporation under the provisions of Article 4.

"Capital Expenditures" shall mean all expenditures in excess of One Thousand Dollars (\$1,000) for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.

"Commencement Date" shall mean the date first written above.

"Corporation" shall mean the Austin-Rosewood Community Development Corporation.

"Depository" shall mean the financial institution in which Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.

"Emergency Expenditure" shall mean (i) any Operating Expense to the extent not included within a Budget and not expected by Manager to be incurred but which Manager believes in good faith to be a necessary Operating Expense required to protect the public safety, or (ii) any expense to fund capital improvements, replacements or repairs necessary to correct any condition that jeopardizes the structural soundness of the Facility, the public safety, the imminent threat of damage to the property, or to prevent a violation of law.

"Event(s)" shall mean all activities and events which are conducted at the Facility and scheduled by Manager.

"Facility" shall mean the Central City Entertainment Center, including all of the parking areas and garages appurtenant thereto.

"Fiscal Year" shall mean a twelve month period of time beginning on October 1 and ending on the immediately following September 30.

"General Manager" shall mean the chief financial officer of Manager at the Facility.

"Governmental Entities" shall mean the federal government, the State of Texas, the City of Austin, or any county, municipality (or any entity created by a municipality), governmental or quasi-governmental entities having jurisdiction or other authority over the Facility.

"Management Fees" shall mean those fees payable to Manager under Section 7.1, 7.2, or 7.3.

"Manager" shall mean LMI/HHI, LTD., doing business as Leisure Management International.

"Material Breach" shall have the meaning provided in Section 10.1.

"Material Contract" shall be those contracts which (i) would require Corporation approval; (ii) permit a similar user or promoter to utilize the Facility for more than twenty-five (25) event days in any Fiscal Year; or (iii) have a term in excess of three (3) years (including renewal options exercisable by any party) and which may not be cancelled by Manager or Corporation without penalty or premium.

"Operating Expenses" shall mean and include all expenditures by Manager in any specified period during the Term of this Agreement, within the authority or responsibility of the Manager under this Agreement, including, but not limited to, all payments made to obtain Operating Revenues; salaries, wages and benefits of personnel working at the Facility; contract labor; maintenance and repairs; utilities; telephone; telescreen and/or scoreboard operations;

dues, memberships and subscriptions; security; audit fees; legal fees directly related to the performance of this Agreement; other professional fees; fees paid to concessionaires or other subcontractors; refuse removal; cleaning; sales taxes; building supplies; ticket commissions; premiums for insurance maintained under Section 8.1; data processing; Advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Facility related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit and debit facilities and telecheck fees and expenses; travel, lodging and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; all damages, losses or expenses paid by Manager or its Authorized Representative as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys fees incurred in litigation against Manager or its Authorized Representative under this Agreement; but excluding any Capital Expenditures, amortization, depreciation and other non-cash charges and any losses, damages, or expenses suffered by Manager or its Authorized Representative as a result of (1) any uninsured negligent act or omission of Manager or its Authorized Representative; (2) any transaction from which Manager or its Authorized Representative derives an improper personal benefit; or (3) any willful Material Breach on the part of Manager.

"Operating Fund" shall mean a fund maintained by Manager under Section 5.1.

"Operating Loss" shall mean the amount by which Operating Expenses for any specified fiscal period exceed the Operating Revenues for such fiscal period.

"Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager (1) for the use of, operation, or admission to, the Facility or any portion thereof; (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licensees; (3) from interest on or proceeds of investment of any accounts required to be maintained under Article 5; (4) for rental or use of the Facility equipment; or (5) as fees for services rendered at the Facility, including parking; but excluding, in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facility and any sums received as disbursements from the Working Capital Fund.

"Operations Start Date" shall mean the later of (a) the date of issuance of a final and unconditional certificate of occupancy or other similar governmental permit or license for the entire Facility or (b) if requested by Corporation, the date of issuance of any temporary certificate of occupancy or similar governmental permit or license permitting an Event to be conducted at the Facility; or (c) the date the Facility actually opens to the public.

"Term" shall mean the time period described in Section 2.3.

"Working Capital Fund" shall mean the fund required to be maintained under Section 5.2.

ARTICLE 2

INTRODUCTION

2.1 Grant of Authority. Corporation hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of Corporation, to provide those management services to Corporation as are set forth in this Agreement in connection with Manager's management, operation and administration of the Facility and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such management services all upon the terms and subject to the limitations of this Agreement. Manager and Corporation acknowledge and agree that Manager shall retain control of the Facility as the manager and operator thereof pursuant to this Agreement, but that Manager may delegate certain specific and limited responsibilities related to the management and operation of the Facility to third parties, but shall retain the exclusive authority and responsibility with respect to the management and operation of the Facility.

2.2 Nature of Relationship. The parties agree that the only relationship created by this Agreement is that between Corporation, as owner, and Manager, as an independent contractor, for certain management and operating services assigned to Manager by Corporation and that Manager is an independent contractor, not an agent, employee, joint venturer or partner of Corporation.

2.3 Term.

a. The initial term of this Agreement (the "Initial Term") shall commence as of the Commencement Date and shall expire for any and all purposes, unless terminated earlier under the terms of this Agreement, at twelve o'clock midnight on the fifth anniversary of the Operations Start Date. Notwithstanding the fact that the Initial Term is provided to commence at a date subsequent to the execution of this Agreement, both Manager and Corporation intend that each shall have vested rights immediately upon the execution of this Agreement and that this Agreement shall be fully binding and in full force and effect from and after the execution hereof by Manager and Corporation.

b. Prior to one hundred and eighty (180) days before expiration of the Initial Term of this Agreement and any extensions, either party may call for renegotiation to extend this Agreement for an additional term of five (5) years. If the parties cannot, through good faith negotiations, reach agreement on the terms and conditions of an extension prior to one hundred and twenty (120) days before expiration, this Agreement shall automatically terminate at the end of the then-current term. In no case may this

Agreement be extended for more than three (3) five (5) year extensions, without City Council approval.

2.4 Contract Administration. Corporation hereby appoints Jesus Olivares and Manager hereby appoints Justin White as their respective Authorized Representatives, each of whom shall act as liaison and contact person between the parties in matters concerning the administration of this Agreement. Each party shall have the right to designate a substitute Authorized Representative by providing written notice to the other party. Except for budget matters, if either party desires to do any act hereunder which requires the other party's approval, such request shall be submitted in writing to the other party's Authorized Representative. The Authorized Representative shall respond to such request within fifteen (15) days after submittal, failing which the request shall be deemed approved. Manager understands and acknowledges that only the Corporation's Authorized Representative shall be authorized to make and/or communicate decisions of the Corporation regarding implementation of this Agreement, and Manager agrees to look exclusively to the Corporation for such input or information as Manager believes is necessary to carry out its duties under this Agreement.

2.5 Authority Regarding Closure of Facility. The parties agree that, in the event Corporation determines that continued operation of the Facility or any portion of the Facility is not feasible, Corporation shall have the authority to close the Facility or portion, and Manager agrees to cooperate with Corporation in performing all acts necessary to accomplish such closure. If a portion of the Facility is closed as a result of the Corporation's closure pursuant to the immediately preceding sentence and not as a result of either Force Majeure or a temporary closing of the part of the Facility resulting from seasonal booking of certain Events precluding the booking of other Events, the parties agree that Manager's Management Fee, as described in Section 7.1, shall not be adjusted unless at least one-third of the Facility's public space is closed for more than ninety (90) consecutive days, in which case Manager and Corporation agree to negotiate an equitable adjustment to the Management Fee for the remainder of the time period that such space is not open to the public. If the entire Facility is closed, Corporation shall pay Manager not later than ten (10) calendar days following such closure the aggregate of (i) all Management Fees owed to Manager as of the date of closure; (ii) all expenses, if any, incurred by Manager and not reimbursed as of such date, to the extent otherwise reimbursable under this Agreement; and (iii) a termination fee of seventy-five thousand dollars (\$75,000.00).

ARTICLE 3

RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the funding limitations set forth in this Agreement, Manager shall exercise its diligent, good faith efforts in managing and operating the Facility so as to minimize Operating Expenses and maximize Operating Revenues. In this connection, the parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facility, but also those events

that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, or other benefit to Corporation or otherwise serve the public interest; provided that no use of the Facility shall be permitted without a reasonable charge for such use.

3.2 Duty and Liability. Manager shall owe to Corporation a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and Corporation and consistent with the terms of this Agreement. Manager shall not be liable, responsible, or accountable in damages or otherwise to Corporation for any act or omission that is within the scope of its authority under this Agreement, except for (i) acts or omissions constituting negligence which are not covered by insurance; (ii) acts or omissions of Manager not in good faith or involving gross negligence, intentional misconduct, or knowing (i.e., conscious awareness) violation of law, (iii) any transaction from which Manager derives an improper personal benefit or (iv) any willful Material Breach on the part of Manager.

3.3 Pre-Opening Duties and Responsibilities. Subject to the limitations set forth in this Agreement Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) on or for the period prior to the Operations Start Date:

- a. Work with Corporation to establish goals, objectives, strategies, areas of responsibility, and lines of communication;
- b. Provide Corporation with detailed written recommendations for the best use of the Facility, including, but not limited to, recommendations regarding design and selection of appropriate uses, no later than thirty (30) days following the execution of this Agreement;
- c. Locate and staff an office for all activities of Manager prior to the Operations Start Date;
- d. Attend regular meetings with Corporation and Central City Entertainment Advisory Committee as often as reasonably necessary to facilitate communications and coordination of activities relating to the Facility;
- e. Review recommendations for marketing plans, MBE/WBE utilization plan, facility design and selection of uses with Central City Entertainment Advisory Committee;
- f. Recommend revisions to the preliminary space program for the Facility to take into account user requirements, operating requirements and local community requirements;
- g. Plan and coordinate public relations activities for the Facility;

h. Make Manager reasonably available for press conferences and other public appearances;

i. Assist in the identification and selection of the various design professionals for the Facility and review with the design professionals the plans submitted by consultants for mechanical, electrical, acoustical, graphics, concession services, landscaping and facility matters for conformity with the operation requirements of the Facility and advise and prepare specifications for furniture, fixtures and equipment for the Facility;

j. Plan, coordinate and participate in major meetings of the design professionals for the Facility as may be requested by Corporation;

k. During presentation of working drawings and other documentation by the design professionals for submission for construction bids and contract awards, work with the Corporation and the design professionals in the (a) review of the documents comprising the working drawing package for design objectives and potential cost savings, as well as performance specifications and warranty performance criteria and (b) review and recommend changes where appropriate, to make the Facility more useful, efficient or functional for its intended purposes;

l. Advise Corporation with respect to the identification, selection of general contractors, contractors and/or subcontractors and in the preparation of bid packages and negotiation and execution of definitive agreements with such parties in connection with the construction of the Facility;

m. Ensure that the concessionaires and vendors at the Facility have obtained necessary permits, bonds and insurance required by the terms of their engagement;

n. Advise Corporation with respect to the review of applications for payment and supporting documentation prepared by general contractors, contractors, and/or subcontractors and others performing work or furnishing materials for the construction of the Facility and assist Corporation in the negotiation of final payments and/or final settlements with all parties involved in the construction of the Facility;

o. Advise Corporation with respect to the enforcement of any agreements with any architects, general contractors, contractors, subcontractors and/or design professionals providing services at the Facility;

p. Establish lines of authority and communications among Manager, Corporation and the design professionals, and all other persons responsible for implementing the development of the Facility and, within two (2) weeks following execution of this Agreement, begin working closely with the Facility design team selected

by Corporation and assist Corporation in evaluating design and construction documents as they accommodate recommended venues;

q. Review preliminary and final designs of the mechanical, plumbing and electrical systems for operational cost effectiveness, energy conservation and general efficiency and evaluate space usage, core plans and efficiency factors;

r. Consult with Corporation regarding the implementation of schedules for the completion of the construction of the Facility;

s. Coordinate the construction and turnover of the Facility for the use, occupancy and operation thereof and assist in the facilitation of the transition from construction to actual use, occupancy and operation of the Facility;

t. Solicit, prepare, negotiate and execute multi-year use agreements with professional sports organizations, family oriented event producers or promoters and other specialty sports and entertainment events and other events requiring significant advance booking;

u. Solicit, prepare, negotiate and execute joint venture or production agreements with international, national and local event producers in order to maximize the utilization of the Facility;

v. Coordinate, solicit and prepare bid packages for presentations for specialty events, exhibitions, collegiate tournaments and other events to be held at the Facility;

w. Recommend and supervise the implementation of a project reporting system with respect to marketing, design, construction, finance and operational requirements;

x. Disseminate to Corporation monthly written reports concerning Manager's pre-opening marketing and operational efforts, such reports to be in the form attached hereto as Schedule 1;

y. Direct and supervise the procurement of all furniture, fixtures and equipment for the Facility subject to the applicable limitations of the Budget;

z. Develop and deliver to Corporation, within one hundred and eighty (180) days of the execution of this Agreement, a preliminary revenue and expense pro-forma projection for the first year of operation of the Facility;

aa. Assist Corporation in determining the Facility's parking requirements;

ab. Prepare, no later than one hundred and eighty (180) days prior to the Operations Start Date, a comprehensive pre-opening marketing plan, to include a pre-opening sales, advertising and community relations, and media plan, subject to approval of the Corporation, and implement the approved plan in a manner that will maximize Facility use of and revenue during the early operational years;

ac. Develop and implement a comprehensive staffing plan, including job descriptions, and identify, select and train the Facility's full-time and part-time staff;

ad. Develop and deliver to Corporation no later than March 31, 1997 written recommendations for the organizational structure and operating policy best suited for the Corporation's continued control over and growth of the Facility.

ae. Identify prospective food, beverage, souvenir, novelty and program concessionaires for the Facility, negotiate and (with the approval of the respective professional sports organizations) execute contracts with those concessionaires;

af. Identify, negotiate and execute contracts with security and all other service contractors providing services to the Facility;

ag. Prepare and provide to Corporation, if necessary, no later than May 1, 1998, a comprehensive revised Operating Budget for the facility;

ah. Prepare, recommend and implement approved operating policies and procedures, and rules and regulations for the Facility;

ai. Establish rental rate schedules for the use of the Facility;

aj. Plan and coordinate, in conjunction with the Central City Entertainment Center Advisory Committee, the dedication opening ceremonies for the Facility;

ak. Design and implement a financial accounting system for the Facility, such system to be mutually agreed upon by the parties;

al. Select, employ and supervise such personnel as shall be necessary for the operation of the Facility prior to the Operations Start Date;

am. Plan and coordinate the sale or licensing of Advertising, parking and any other source of Operating Revenues desirable for the Facility, and in connection therewith, make distributions from the Operating Fund as contemplated herein;

an. Perform such other consulting, administrative or management services as reasonably requested by Corporation;

ao. Prepare, recommend and use reasonable efforts to implement a program for the hiring and training of minorities and women for employment at the Facility as well as the involvement of minority and women owned business enterprises to best reflect the minority make-up of the immediately-surrounding communities;

ap. Prepare, recommend and, subject to the availability of funds, use reasonable efforts to implement a program designed to comply with the requirements of the Americans with Disabilities Act ("ADA") as they apply to the operational aspects of the operation of the Facility but not the Facility itself; any physical accessibility requirements of the ADA with respect to the Facility shall remain the responsibility of the Corporation;

aq. Attend regular meetings with Corporation for which Manager shall provide a summary of the operation of the Facility for the previous quarter and prospects for future operations, and at which any other business regarding the Facility may be discussed;

ar. Provide to Corporation monthly reports of all activities of Manager prior to the Operations Start Date.

3.4 Post-Opening Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement, Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) throughout the Term hereof after the Operations Start Date:

a. Manage and operate the Facility and any facilities ancillary thereto and contract for its use in a manner that will promote and further the purposes for which the Facility is to be constructed, as set forth in the Recitals to this Agreement;

b. Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facility or who desire otherwise to use the Facility or any part thereof or (b) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof;

c. Coordinate (and participate in where necessary or applicable) all Advertising, licensing, promotional activities, marketing, and public relations for or at the Facility;

d. Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) for the use of Advertising space in or about the Facility and all Advertising rights of whatever kind or nature related to the Facility or (b) for the sale, promotion, marketing and use of all names, trademarks, trade names, logos and similar intangible property relating to the Facility;

e. Operate at and for the Facility, through concessionaires selected by Manager, the sale of food, beverages, souvenirs, novelties and programs;

f. Select, schedule, and coordinate the efforts of all parties involved in the operation of the Facility and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4;

g. Plan, coordinate, and administer operation of the Facility and continue to identify, select, and train the Facility's staff;

h. Subject to the Budget, retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with Corporation's legal department where necessary or appropriate;

i. Coordinate the work of all parties performing work in connection with the operation of the Facility;

j. Monitor actual and projected Operating Expenses; and advise Corporation of any projected or actual variances from the approved Budget(s) in monthly reports;

k. Make prompt payment of the Operating Expenses from funds available for that purpose under Article 5;

l. Furnish all services necessary to accomplish the foregoing requirements of this Section 3.4;

m. Perform such other consulting, administrative or management services as reasonably requested by Corporation;

n. Devise and implement procedures (including preventive maintenance procedures) reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition; and

o. Market the sale of seats within the arena portion of the Facility.

p. Prepare monthly and year-to-date management reports regarding the Facility operations by segment and by concession to assist Corporation in planning, budgeting, cost control, performance evaluation and revenue enhancement. These reports shall include, but will not be limited to, the following:

1. Patron attendance by use;

2. Monthly and year-to-date reports of revenues and expenses as compared to Budget;
3. Analyses of food and beverage concession and catering performance and income for the current period, year-to-date, and prior periods;
4. Analyses of other concession/contractor performance and income;
5. Analyses of event attendance and revenues on a per capita, average and total basis; and
6. Other statistical reports requested by Corporation.

q. Implement and monitor comprehensive risk management and energy efficiency programs for the Facility;

r. Use reasonable efforts to comply with the Facility's MBE/WBE utilization plan as approved by Corporation. Such plan shall be prepared jointly by Corporation and Manager;

s. Maintain, for review by the Corporation upon reasonable notice, information as reasonably required by Corporation to satisfy Corporation's responsibilities, including information regarding injuries and unusual incidents at the Facility, and regarding security measures and safety programs (including recommendations for changes of such measures/programs) at the Facility.

3.5 Compliance with the Law; Duty. Manager shall comply with all applicable laws, rules, regulations, ordinances relating to the use and operation of the Facility. Manager shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public entertainment facility would operate. Subject to the foregoing, Manager shall promptly and fully discharge all of its obligations under this Agreement. Failure of Corporation to approve Manager's funding recommendations for such compliance shall relieve Manager of all liability arising from such lack of funding.

3.6 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, Corporation recognizes and agrees that performance by Manager of its responsibilities under Article 3 and otherwise under this Agreement is in all respects subject to and conditioned upon provision of funds to Manager for such purposes as hereinafter provided, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Budgets approved by Corporation from time to time. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager to request additional funds from the Corporation, except for Emergency Expenditures for which there are adequate funds on hand,

and any such request shall be made in writing at least thirty (30) days before such funds are needed. The requirement for a written request for funds shall not apply in the event of a need for an Emergency Expenditure if there is additional funding available in the Operating Fund to cover such Emergency Expenditure. Manager accepts the limitations of the Budget and agrees that Corporation has no responsibility or duty to provide funds in excess of the approved Budget, as such Budget may be amended from time to time. If additional funds are necessary Corporation agrees to request from the City Council of the City of Austin such additional funds.

3.7 Bond. Prior to or simultaneous with the execution of this Agreement, Manager shall deliver to Corporation a "Blanket Position Fidelity Bond" in the amount of Twenty Thousand Dollars (\$20,000) for each Manager employee who handles the Facility monies on behalf of Manager and the Corporation. In the event of a fraudulent act, dishonest act or embezzlement by an Manager employee, Corporation may make demand upon and receive payment under such bond.

3.8 No Construction or Design Responsibilities. Notwithstanding Manager's review of and recommendations with respect to the design, plans, and specifications for the Facility, Manager will not have responsibility to Corporation or any other person for or authority concerning the same and will not supervise or be responsible in any manner for construction related to the Facility. The parties acknowledge and agree that Manager shall not be responsible for the selection of architects, contractors, subcontractors or suppliers; the prosecution of the work; the compliance of the work with the plans and specifications for the Facility or applicable law, rules, regulations, or codes; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement or renovation of the Facility notwithstanding the obligations of Manager hereunder. Corporation acknowledges that Manager's recommendations, if any, are based solely upon Manager's practical experiences in the operation of public assembly facilities similar to the Facility. Corporation acknowledges and agrees to look to the contractor, subcontractors, architects, engineers and other design professionals for all matters related to the design and construction of any such construction work and not to Manager.

ARTICLE 4

RECORDS, ACCOUNTS AND REPORTS

4.1 Books/Records. The Manager shall maintain, with respect to its management and operation of the Facility, complete, separate and accurate books of account and records of its activities and finances, as reasonably required by Corporation or as required by applicable federal or state law. Such books of account and records shall be prepared and maintained in accordance with generally accepted accounting principles and industry standards.

4.2 Access to Facility Premises/Facility Information. Authorized representatives of Corporation and City shall be issued an identification credential authorizing their access to the Facility. Upon reasonable prior notice to Manager and presentation of such identification credential, authorized representatives shall have the unqualified right to: (a) enter upon Facility property and inspect the property and improvements, and (b) examine, copy and make extracts of books, records, accounting and financial data and any other documents or records concerning the management and operation of the Facility. The Corporation and City shall each provide Manager with an up-to-date list of authorized, credentialed representatives.

4.3 Annual Audit Report. Not later than December 31 of each Fiscal Year during the term of this Agreement, the Manager shall furnish to Corporation an annual audit report for the previous Fiscal Year, which shall include a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accounting firm preparing the report, which shall be a firm of national reputation selected jointly by the Manager and Corporation. In addition, the Manager shall furnish to the Corporation an annual report on agreed-upon procedures for the Manager's system of revenue accounting, for which report the Corporation shall determine the agreed-upon procedures. The engagement letter from the independent firm of certified public accountants shall contain a statement that the Corporation shall receive a copy of all audit work papers produced either by the Manager or the accounting firm during the annual audit of the financial statements. The notes to the audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. The Manager shall deliver to the Corporation, at the same time it delivers the annual audit report, a copy of all of the audit work papers that underlie the audited annual financial statements.

4.4 Financial Reports. Within twenty-five (25) calendar days of the end of each calendar month, the Manager shall furnish to Corporation a report regarding the Facility's financial performance during the prior month, including all Operating Expenditures and Operating Revenues.

4.5 Capital Expenditure Budget. Not later than May 1 of each Fiscal Year during the term of this Agreement, the Manager shall submit a proposed budget for projected Capital Expenditures for the following Fiscal Year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for Corporation. In addition, if the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety or the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action. Failure of Corporation to approve Manager's recommendations for such remedial action shall relieve Manager of all liability arising from such lack of remedial action.

4.6 Annual Operating Budget. Not later than May 1 of each Fiscal Year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a

proposed annual operating budget for the following Fiscal Year, listing all projected Operating Revenues and Operating Expenses by category and by calendar month. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of operating budgets for the Corporation.

4.7 Budget Approval. Corporation shall promptly review all proposed budgets and amendments thereto and communicate to the Manager any comments or suggested revisions thereto. The parties agree to negotiate all budget matters in good faith and to meet at least every two weeks following submission of the proposed budget, or more often as may be necessary, to resolve any outstanding budget issues. If, however, the parties are unable to reach a final agreement in writing by August 1 of any Fiscal Year, notwithstanding the parties' good faith efforts, the Budget for the following Fiscal Year shall be identical to the Budget then in effect.

4.8 Funding Contingency. Notwithstanding the provisions of Section 4.7 hereof, in the event of the non-appropriation of funds by the City of Austin to the Corporation in an amount sufficient to enable the Corporation to make all required payments to Manager under this Agreement, Manager shall have the right to either accept such reduced or insufficient funding or, at Manager's election, to terminate this Agreement by written notice to the Corporation given within sixty (60) days following Manager's receipt of notice of such non-appropriated funding. In the event that all appropriations or funds are restored and fully funded by the City of Austin to the Corporation for the operation and maintenance of the Facility after this Agreement has been terminated pursuant to this Section 4.8, Corporation shall provide written notice thereof to Manager whereupon Manager shall have the first right to enter into a new agreement with Corporation on the same terms and conditions set forth herein. In the event Manager elects to exercise such right and option, Manager and Corporation shall promptly thereafter execute and enter into an amendment to this Agreement reinstating the same to its original terms and conditions. Subject to the appropriation of funds by the City, Corporation shall pay to Manager the Management Fees and all expenses and any other sums due and payable to Manager hereunder through and including the date of termination.

ARTICLE 5

FUNDS AND ACCOUNTS

5.1 Operating Revenue Account. After the Operations Start Date, Manager shall collect all Operating Revenues and deposit them in a separate, interest-bearing account maintained by Manager in its name in the Depository (the "Operating Fund"). Manager shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article 5. Monies in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there

shall be a balance in the Operating Fund in an amount in excess of the anticipated working capital and Operating Expenses for the first month of the ensuing year, Manager shall disburse such excess to Corporation on or before the fifteenth (15) day of such month, subject to the provisions of Article 7 below.

5.2 Working Capital Fund. After the Operations Start Date, in order to provide the working capital necessary to permit Manager to perform its obligations hereunder with respect to Operating Expenses and Capital Expenditures not funded by the Operating Fund, Corporation shall advance to Manager for deposit in an interest-bearing account in the Depository to be held and administered by Manager in Manager's name ("Working Capital Fund"), a minimum amount equal to twenty-five percent (25%) of the projected Operating Expenses for the Budget year then in effect, as provided below:

a. Working Capital Fund. By no later than the first day of each Fiscal Year, Corporation shall advance to Manager such amount as is necessary to replenish the Working Capital Fund to a minimum amount equal to twenty-five percent (25%) of the projected Operating Expenses for the approved Budget then in effect; provided, however, that in no event shall the aggregate of all contributions made in accordance with this Article 5 in any Fiscal Year exceed the amount of Operating Expenses set forth in the Budget.

b. Application to Unfunded Operating Loss. If after the first day of any month the amount of monies on deposit in the Operating Fund and available for that purpose shall be insufficient for the payment of Operating Expenses then due or budgeted to become due during such month, Manager may advance the amount of such insufficiency from the Working Capital Fund to the Operating Fund. Manager shall immediately notify Corporation of any such advance and, subject to the limitations in Section 5.2a., Corporation shall promptly, but in no event later than the tenth (10th) day following the giving of such notice, restore to Manager for deposit in the Working Capital Fund the amount of such advance.

c. Application to Emergency Needs. If at anytime or from time to time, by reason of any occurrence of an Emergency Expenditure, a shortfall occurs in monies on deposit in the Operating Fund (together with funds made available therefor by Corporation under Section 4.6) for payment of Operating Expenses then due, Manager may advance from the Working Capital Fund to the Operating Fund the amount of such insufficiency. Manager shall immediately notify Corporation of such advance, and to the extent funds are available in the Budget, Corporation shall promptly, but in no event later than the tenth (10th) day following the giving of such notice, restore to Manager for deposit in the Working Capital Fund the amount of such advance.

5.3 No Obligation of Manager to Advance Funds. Corporation is solely responsible for and shall promptly pay, or provide funds to Manager to enable Manager to pay, all Operating Expenses, Emergency Expenditures, and Capital Expenditures and Manager shall not

be obligated to make any advance of its own funds to or for the account of Corporation or to pay any sums incurred for the performance of services or goods delivered to the Facility, nor shall Manager be obligated to incur any liability or obligation for the account of Corporation.

ARTICLE 6

POWER AND FUNCTIONS

6.1 Authority of Manager. Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on Manager in this Agreement. The powers of Manager with respect to the Facility shall be plenary, subject only to the limitations expressly set forth in this Agreement.

6.2 Property. The Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by Corporation and/or the City. Upon notice from Manager to Corporation of the need to move off-site any movable property that Manager has determined is surplus or unnecessary at the Facility, Corporation will remove such property within three (3) days. Corporation shall be obligated to provide Manager with an accurate initial inventory of all property and non-consumable items located at the Facility owned by the Corporation and Manager shall be obligated to provide Corporation with an accurate annual inventory of all property and non-consumable items located at the Facility.

6.3 Capital Improvements. Except for the Capital Expenditures set forth in the Budget and Emergency Expenditures, Manager shall have no authority to make any material alterations or any capital improvements to the Facility without the prior written consent of Corporation.

6.4 Contracts. The Manager shall have no authority, without the prior written consent of Corporation, to enter into: (a) any contract for more than Thirty Eight Thousand and No/100 Dollars (\$38,000) or (b) any contract for the provision of goods and/or services to the Facility at any time beyond the expiration date of the initial term of this Agreement provided, however, that Corporation agrees to cooperate with Manager in connection with the execution of such contracts that would extend beyond the term of this Agreement by executing and delivering agreements with the providers of such goods and services whereby Corporation agrees to honor and observe such contracts following termination of this Agreement. Manager shall have the right to enter into, execute, and deliver contracts with users of the Facility which extend beyond or relate to dates falling after the expiration of the term of this Agreement. All contracts entered into by Manager shall provide that the same are assignable to Corporation without the vendor's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that Corporation shall have the right to and the Corporation shall assume in writing any or all then outstanding contracts affecting the Facility.

6.5 Employees.

a. Employees now or hereafter hired by Manager in connection with the management services provided by Manager shall be employees of Manager and not of Corporation, although the employment costs of such employees (wages, salary, benefits) shall be part of the Operating Expenses. Such employment costs shall be consistent with industry standards in the field of private facility management, at each level of employment. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees, subject only to the provisions of Section 4.6 of this Agreement.

b. Manager, following consultation with the Corporation, shall select the General Manager who will be placed on site at the Facility. The General Manager shall be and remain an employee of Manager. The General Manager's salary and all other employment costs, including, travel to and from Houston for meetings, car allowance and other benefits and related employment costs, shall be part of the Budget and Corporation shall reimburse Manager therefore. In the event that Corporation has concerns related to the General Manager, Corporation and Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, Manager shall propose to Corporation a plan to address such concerns. If such plan is not satisfactory to the Corporation, the parties shall continue meeting until a mutually agreeable plan is reached.

c. Corporation covenants and agrees that neither it nor its Authorized Representative shall during the term hereof or for a period of twelve (12) months following the expiration or early termination of this Agreement hire, employ, solicit for hire, or engage in any manner or for any purpose any person who has served as General Manager during the Term of this Agreement, or any other of Manager's "senior personnel." "Senior personnel" shall mean and refer to the three (3) individuals involved in management who are designated by Manager in a written notice to the Corporation as "senior personnel" for purposes of this Agreement.

6.6 Purchase of Supplies and Services. Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it in the management of the Facility but shall endeavor to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager. Manager may not, without the prior written consent of the Corporation, acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement.

Manager has advised Corporation that Manager performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Facility, Manager may from time to time book the same event at a number of the facilities it operates. If Manager desires to book events at the Facility while at the same time booking said events under the same contract (or one or more contracts executed concurrently) for other facilities for which Manager is providing services, then before finalizing such contract, Manager shall obtain Corporation's approval over the allocation of such contracts' expenses to the Facility. Similarly, if authorized to acquire business services for the Facility, Manager desires to acquire goods or services in bulk for the Facility and one or more of the other facilities for which Manager performs services, Manager shall first obtain Corporation's approval over the allocation of the costs thereof to Facility. Provided, however, Manager shall not allocate or impose any costs or expenses related to its corporate offices or other facilities to the Facility which are not related to Manager's provisions of management services to the Facility. Provided, Corporation's approval under this Section 6.6 shall not be unreasonably withheld or delayed.

6.7 Settlement of Claims. Manager has been advised by Corporation (and Corporation shall continually keep Manager apprised of) Corporation's procedures and requirements in respect of settlement of third party claims filed against Corporation or with respect to the Facility. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by Corporation so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of civil or criminal penalty against Manager. Manager and Corporation agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, all costs and expenses thereof, including the settlement thereof, to be deemed an Operating Expense if the Corporation agrees to such settlement (unless covered by insurance, in which case the Corporation shall be deemed to consent) in accordance with the terms and provisions of this Agreement.

6.8 Concession and Service Contracts. Manager shall obtain the Corporation's prior approval of the standard contract form, and of any material variations thereto, to be entered into by and between Manager and third parties for the provision of the food and beverage concession or services for the Facility. The parties agree and acknowledge, however, that Corporation's approval authority is limited to the terms and conditions of Manager's standard contract form, and that Corporation shall not have the right to select or approve any specific concessionaire.

6.9 Corporation's Covenant Against Interference. Corporation covenants and agrees that neither it nor its Authorized Representative shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors or other persons doing business or seeking to do business with the Facility nor shall the Corporation or its Authorized Representative solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities or other benefits from Manager or any person doing business with the Facility.

ARTICLE 7

FEES AND EXPENSES

7.1 Pre-Opening Management Fees. During the design, construction and development of the Facility, Corporation shall pay to Manager a management fee of \$6,500 per month for each month during the Term prior to the Operations Start Date. In addition, Corporation shall reimburse Manager for any consulting fees and costs incurred by Manager, provided that such fees and/or costs do not exceed the amounts approved in the pre-opening Facility budget attached hereto as Exhibit "B", and provided that the Corporation's obligations to pay the additional fees referred to in this sentence shall terminate at the Operations Start Date. The management fees described in this Section 7.1 shall be payable on or before the first day of each month commencing with the Commencement Date. All consulting fees and costs incurred by Manager and payable under this section 7.1 shall be payable within thirty (30) days following receipt by Corporation of an invoice, along with supporting documentation and invoices for all such consulting fees and costs. The management fee shall be prorated for any partial month during such period.

7.2 Annual Management Fees. For services to be performed by Manager, Corporation shall pay to Manager, commencing with the Operations Start Date, a base fee of \$100,000.00 per year, such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of each month throughout the remaining Term hereof. The fee shall be prorated for any partial month during such period.

7.3 Performance Compensation.

a. In addition to the compensation payable to Manager under Sections 7.1 and 7.2 hereof, for the first year following the Operations Start Date, Corporation shall pay to Manager, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the loss or profit above the Budget estimates for such Fiscal Year (attached hereto as Exhibit C), provided, however, in no event shall the amount payable to Manager under this Section 7.3(a) exceed \$25,000. For purposes of this Section 7.3(a), Emergency Expenditures shall be excluded from the calculation of Operating Expenses.

b. In addition to the compensation payable to Manager under Sections 7.1 and 7.2 hereof, following the first anniversary of the Operations Start Date, Corporation shall pay to Manager, annually in arrears, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the loss or profit above the Budgeted estimates for such Fiscal Year, provided, however, in no event shall the amount payable to Manager under this Section 7.3 exceed \$25,000 in any Fiscal Year. For purposes of this

Section 7.3, Emergency Expenditures shall be excluded from the calculation of Operating Expenses. Performance compensation shall be negotiated for any renewal term.

ARTICLE 8

INSURANCE

8.1 Insurance to be Maintained by Manager. Throughout the term of this Agreement, Manager shall carry insurance in the types and amounts specified below. Manager agrees to furnish to Corporation certified copies of all policies as evidence thereof:

a. All risk coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief on the building facility and City owned or Corporation owned contents contained within the Facility. The coverage shall be at replacement cost with a 100% coinsurance clause and the Corporation shall be shown as a mortgagee, and the Corporation and City shall be loss payees on the policy.

b. Comprehensive Electronic Data Processing coverage for hardware, software, and related equipment located at the Facility, at replacement cost with a 100% coinsurance clause. The policy shall provide coverage for interruption of power and electrical disturbance.

c. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Worker's Compensation Act, as amended from time to time, and minimum policy limits for employers' liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee. The policies shall contain these endorsements in favor of the City and Corporation:

- i. Waiver of Subrogation
- ii. 30 day Notice of Cancellation

d. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$5,000,000. Coverage shall include, at a minimum, Personal and Advertising Injury Liability coverage and Products and Completed Operations coverage with a separate aggregate limit of \$5,000,000. The policy shall contain the following provisions:

- i. Blanket contractual liability coverage
- ii. City and Corporation indicated as additional insureds
- iii. 30 day notice of cancellation in favor of the City and Corporation

iv. Waiver of transfer right of recovery against others in favor of the Corporation and of the City

v. Aggregate limits of insurance per location endorsement

vi. Independent contractors' coverage

e. Security guard liability coverage with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. Personal injury coverages, including coverage for false arrest, shall be provided. The policy shall contain the following provisions:

i. City and Corporation named as additional insureds

ii. 30 day notice of cancellation in favor of the City and Corporation

f. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of City and Corporation:

i. Waiver of Subrogation endorsement

ii. 30 day notice of cancellation endorsement

g. Errors and Omissions coverage, not less than \$500,000 per claim, shall be in place for protection from claims arising out of the performance of professional services. Coverage shall be continuous for not less than 24 months following termination of the Agreement, including any renewals. Coverage, including any renewals, shall have a retroactive date coincident with or prior to the date of this Agreement.

h. General Requirements.

Manager agrees not to commence work until it has obtained the required insurance as described in this Section 8.2, and until such insurance has been reviewed by City and Corporation. So long as Corporation provides adequate funding therefor, Manager shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or as required under this Agreement.

Insurance is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B + VII or better. Workers compensation coverage written by the Texas Workers Compensation Insurance Fund shall be acceptable. Professional liability and Security Guard liability coverage shall be written by companies acceptable to City and Corporation.

All endorsements naming the City of Austin, such as additional insured, waivers, and notice of cancellation endorsements, as well as insurance certificates, shall indicate: City

of Austin, Parks and Recreation Department, P.O. Box 1088, Austin, Texas 78767-8828
ATTN: Director of PARD. If this Agreement is assigned, these endorsement requirements shall apply to the assignee and Manager agrees to notify any assignee or proposed assignee of such requirements.

The "other" insurance clause shall not apply to the City or Corporation where City or Corporation, as applicable, is an additional insured shown on any policy. It is intended that policies required in the Agreement shall be considered primary coverage as applicable.

If insurance policies are not written for the amounts specified above, the Manager shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

Corporation shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, make any reasonable request for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either Corporation or Manager or the underwriter on any such policies.

City and Corporation reserve the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, to insurance coverage, limits, and exclusions when deemed necessary and prudent by City and Corporation based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company.

8.2 Indemnity. To the extent allowed by law Manager and Corporation shall indemnify defend and hold harmless the other party and the City and their respective officers, agents, employees, directors, and shareholders ("the Indemnified Parties") harmless of, from, and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs of court), including claims for personal injury, that any or all of the Indemnified Parties may hereafter suffer or incur in connection with, related to or in any way, directly or indirectly, arising out of the performance by Manager or Corporation or its representatives, agents, employees, or subcontractors, of its obligations under this Agreement.

8.3 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives, from any claims for damage to any person, the Facility or any fixtures, personal property, improvements and alterations of either party in or about the Facility that are caused by or result from risks insured against under any insurance policies required to be carried by the parties under this Agreement, whether or not the cause thereof results from

the negligence (whether ordinary or gross of any party to this Agreement). The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

8.4 Survival. All obligations of the parties under this Article 8 shall survive the expiration or early termination of this Agreement.

ARTICLE 9

TERMINATION

9.1 Termination for Cause. Either party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 10.1, by the other party and the failure of the breaching party to cure the Material Breach in accordance with Section 10.1.

9.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debts as they mature, or the liquidation, dissolution or termination of the corporate or partnership existence of Manager or the failure of the City of Austin to appropriate funds sufficient to meet the budget for the succeeding year, subject to the provisions of Sections 4.7 and 4.8.

9.3 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to Corporation, returning all balances in the Operating and Working Capital Funds to Corporation, leaving equipment, supplies, manuals, books, records, and, inventories that are the property of Corporation or from funds made available by Corporation, and Corporation shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for Corporation during the term of this Agreement.

ARTICLE 10

BREACH

10.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

a. Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after written notice has been given to the breaching party;

b. Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after written notice has been given to the breaching party, except that if the breach cannot reasonably be cured within thirty (30) days, a Material Breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach.

10.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to the lesser of 12% per annum or the maximum non-usurious rate of interest permitted by applicable law.

10.3 Notice of Breach. Each party shall promptly notify the other party in writing of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 10.1 or 10.2, a notice of a breach must state that it is a notice of breach and must specify the act or omission alleged to constitute a breach of this Agreement.

10.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

a. The right to cure, at the breaching party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 10.2;

b. The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 10.2;

c. The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of a Material Breach other than breach in the payment of money;

d. The right to terminate this Agreement; or

e. The right to injunctive relief including seeking specific performance of the breached obligation.

ARTICLE 11

MISCELLANEOUS

11.1 **Notices.** Unless expressly otherwise provided elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when telecopied, telegraphed or telexed to a party, at such party's address set forth below or at such other address as a party may designate by notice given to the other in accordance with the foregoing.

To Corporation:

Director, Parks and Recreation Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828
Attention: Jesus Olivares

With a copy to:

City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

To Manager:

Manager/HHI, LTD.
Eleven Greenway Plaza
Suite 3000
Houston, Texas 77046
Attention: President

With a copy to:

Denis C. Braham
Winstead Sechrest & Minick P.C.
910 Travis, Suite 1700
Houston, Texas 77002

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. or any day which is not a business day, be deemed received on the next following business day.

11.2 Amendments. This Agreement may be amended only by the written consent of the parties.

11.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Schedules" are to be Articles and Sections of and Schedules to this Agreement.

11.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

11.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

11.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, successors, and assigns by this provision shall not be deemed to permit any assignment by a party of any of his rights or obligations under this Agreement except as expressly provided herein.

11.7 Assignment. Manager shall not voluntarily assign or encumber its interest in this Agreement without first obtaining Corporation's written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without Corporation's consent shall be void. Manager shall, however, have the right without Corporation's consent, to assign this Agreement as follows, provided the assignee has net worth comparable to Manager's net worth: (i) to a general or limited partnership if (A) Manager is a general partner and (B) the partnership executes an agreement required by Corporation assuming Manager's obligations; (ii) to a corporation if (A) Manager or its principals own the majority

of the outstanding stock of the corporation entitled to vote on the election of directors and (B) the corporation executes an agreement required by Corporation assuming Manager's obligations; or (iii) to a corporation with which Manager has merged or consolidated, to any principal of Manager or any parent or subsidiary of any such principal or of the Manager, or to a purchaser of all or substantially all of Manager's assets, if the assignee executes an agreement required by Corporation assuming Manager's obligations under this Agreement. The provisions of this Section 11.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank or other institutional lender providing credit to Manager or any of its Affiliates.

11.8 Further Action. Each party, within thirty (30) days after notice from the other party, shall execute and deliver to the party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, and the other party is not, to the best of the party's knowledge, in default under this Agreement or stating the exact nature of any default alleged to have occurred.

11.9 Entire Agreement. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

11.11 Applicable Law; Attorneys' Fees. This Agreement calls for performance and shall be performable in Travis County, Texas and shall be governed by, and construed and enforced in accordance with the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), and venue for any dispute arising hereunder shall be exclusively in the state courts of Travis County, Texas. The prevailing party in any litigation or other similar proceeding relating hereto, or for the enforcement of the provisions hereof, shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing party in such action.

11.12 Force Majeure. Neither party hereto shall be liable or responsible to the other party for delay, damage, loss, failure or any inability to perform any of its respective obligations, covenants, and conditions caused by "Force Majeure" if notice is provided to the other party within ten (10) days of actual knowledge of the event of Force Majeure that such party is unable to perform. The term "Force Majeure" as used in this Agreement shall include the following: an act of God, strikes, lock-outs, war, riot explosions, industrial disturbances,

acts or restraints of any government authority (civil or military), acts of the public enemy, laws, rules and regulations of Governmental Entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), civil commotion, blockades, insurrections, acts of terrorists or vandals, earthquakes, landslides, sinkholes, hurricanes, washouts, breakage or accidents to equipment or machinery, any material interruption of utilities at the Facility not willfully caused by a party hereto, a confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, accidents to equipment or machinery, epidemics, lightning, fire or other casualty, storm, floods and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome. In no event, however, shall the failure to pay any liquidated sum of money by either party be an event of Force Majeure.

11.13 Confidential/Proprietary Information. Manager understands and acknowledges that both Corporation and City are subject to the Texas public information and open meetings laws and regulations, and that the ability of Corporation and City to maintain the confidentiality of any information or data received pursuant to this Agreement will be subject to such laws and regulations. City shall notify Manager promptly in writing upon receipt by the City or Corporation of an open records or other request for information provided by or relating to Manager or the Facility.

11.14 No Third Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, Corporation and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third party beneficiary of this Agreement.

11.15 Gratuities and Kickbacks. It shall be a breach of Manager's obligations hereunder to offer, give, or agree to give any employee of City or Corporation or former employee of Corporation a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to or solicitation of any contract or proposal therefor by Manager from City or Corporation.

11.16 Limitation of Liability.

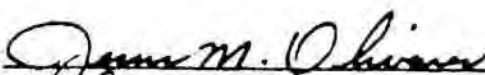
(a) Notwithstanding any contrary provision hereof, Corporation agrees that no partner, co-venturer, employer, agent, director, officer, shareholder, or Affiliate of Manager shall be personally liable to Corporation or anyone claiming by, through or under Corporation solely by reason of any default by Manager under this Agreement, any obligation of Manager

to Corporation, or for any amount that may become due to Corporation by Manager under the terms of this Agreement or otherwise.

(b) Notwithstanding any contrary provision hereof, Manager agrees that no employee, official, agent or director of the Corporation shall be personally liable to the Manager or anyone claiming by, through or under the Manager solely by reason of any default by the Corporation under this Agreement, any obligation of Corporation to Manager, or for any amount that may become due to Manager by Corporation under the terms of this Agreement or otherwise.

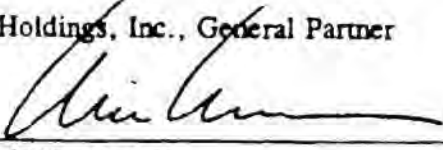
11.17 No Representation as to Operations Results. Corporation recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of Manager. Manager has made no and disclaims any purported or actual representation or warranty as to the financial results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues, or Operating Expenses or the accuracy of its projections and estimates thereof. Corporation recognizes and accepts that all Budgets and projections represent Manager's estimate of the expected expenditures and revenues and that Manager is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Name: Jesus M. Olivas
Title: Chairman of the Board

LMI/HHL, LTD.

By: SCM Holdings, Inc., General Partner

By: 
Mike McGee
President

SCHEDULE 1
MONTHLY REPORT FORMAT

CITY OF AUSTIN
CENTRAL CITY ENTERTAINMENT CENTER
RFP NO. KM96300004
ADDENDUM NO. 1
JUNE 12, 1996

This addendum is hereby incorporated in the Request for Proposal.

Questions asked and City's responses are:

1. The RFP asks for substantial services to be performed prior to the opening of the CCEC. Will an inclusion of fees during construction period void that proposal?

Prior to the opening of the CCEC, the services provided by the Facility Manager will be to his/her benefit during operation of the Center. No fee payments to the Facility Manager are anticipated prior to the opening of the CCEC. If a proposer includes fees it will not void the proposal.

2. During construction will office space be available on the site, possibly in the construction office?

The requirement of field office space for the Facility Manager is not planned at this time. Provisions can be made for office space to be provided on site for the Facility Manager.

3. What authority will the management company have to make recommendations during construction and final design phase? Who is the final authority on those issues?

The Facility Manager is encouraged to make recommendations on the design for inclusion into the construction bid documents. The Design Team and City staff will review all recommendations. The City will be the final authority on design with the City having final approval of the design.

Page 6, (E), 3.0 MINORITY INVOLVEMENT IN CCEC

4. Is the City Attorney's Office or other City Staff available to help in assuring that any proactive actions are within legal and city guidelines?

Yes, City staff will provide input as requested on issues concerning procurement and M/WBE opportunities.

Page 6, 5.0 FACILITIES

- 5a. Will the current construction drawings and notes be made available to prospective proposers?

Yes, current drawings and specifications can be reviewed at the offices of Clovis Heimsath Architects, 605 Brazos, Suite 100, Austin, Texas 78701, (512) 478-1621.

- 5b. Can the budget for the project be made available to prospective proposers?

Currently, there is a budget for A/E, construction, and acquisition, which is funded by the 108 Loan, CDBG, and General Fund dollars. The budget is as follows: Land-\$924,711, A/E-\$910,000, Construction-\$7,750,000 for total budget of \$9,584,711.

Page 9, 5.0 FACILITIES, Bowling Equipment

- 6a. Is the specification of Brunswick Equipment (other than is currently owned by the city) a requirement?

All equipment proposed and installed must be compatible to the re-conditioned Brunswick Equipment supplied by the City.

- 6b. Where is the pinsetting equipment being stored currently?

The City-owned Brunswick Equipment is currently stored in a hanger building located at the site of the new Austin-Bergstrom Municipal Airport. To view equipment, contact Otis E. Williams, Project Coordinator, Parks and Recreation Department, (512) 499-6754.

7. Section 6.0.d., PROPOSAL REQUIREMENTS, is hereby deleted and replaced with the following:

Description of your proposed project management role, based on your past experiences during design review and construction phases.

8. Change Section 12, NUMBER OF COPIES, page 18 of the RFP to reflect "proposals prior to 2:00 p.m., (CST), July 8, 1996".
9. Blueprints of CCEC, Attachment A, are provided to give a general overview of current plan of the Facility.
10. What is the total occupancy of the Facility?

The total occupancy allowed by the building code is 1,394.

CITY OF AUSTIN
CENTRAL CITY ENTERTAINMENT CENTER
RFP NO. KM96300004
ADDENDUM NO. 2
JUNE 17, 1996

This addendum is hereby incorporated in the Request for Proposal.

Additional questions asked and City's responses are:

PAGE 12, SECTION 6.0 PROPOSAL REQUIREMENTS

1. Is current facility management a requirement?

Yes. Current facility management is a requirement.

PAGE 15, SECTION 7.0 PROPOSAL FORMAT

2. Are audited financial statements a requirement and what if company has not had their statements audited?

Audited financial statements for the last five (5) years are required. A compilation of financial statements for the last five (5) years by a Certified Public Accountant or a Business Information Report provided by Dunn & Bradstreet may be provided in lieu of audited financial statements.

3. What is the square footage currently budgeted for the Games Area and how many and type of games are anticipated?

The Games Area currently have 730 square feet in two spaces combined. We anticipate that the game machines will be leased by the Facility Manager. Game types will be determined by the Facility Manager. The number of games is dependent on the size of the game machine. We estimate the two rooms will hold 12 to 18 game machines.

4. Appendix H was not included on the M. Crane and Associates Report. Can we get a copy of this?

A copy of Appendix H is attached.

5. All other terms and conditions remain the same.

Approved By: Eddie Clark for
Ken Muenzler, Senior Buyer

Acknowledged By: _____
Authorized Representative

RETURN ONE COPY TO THE PURCHASING OFFICE, CITY OF AUSTIN, PRIOR TO CLOSING DATE OR WITH SEALED PROPOSAL: FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR PROPOSAL.

APPENDIX H
PROFORMA CASH FLOWS TO VENDORS



Amendment No. 4
to
Facility Management Agreement
for
the Central City Entertainment Center
between
LM/HHI, LTD. dba
Leisure Management International
and the
Austin-Rosewood Community Development Corporation

- 1.0 The Agreement is hereby amended as follows: Change the Manager's address, contact numbers, and tax ID number per the Manager's request and the information provided by the Manager on December 1, 2003 to read as follows:

Change From:

Leisure Management Int'l
1 Greenway Plz Ste 3000
Houston, TX 77046-1105
EI7016410 1

Telephone: (713) 623-4583
Fax: (713) 622-4134
Tax ID Number: 78-0216786

Change To:

Leisure Management Int'l
701 Market St., 4th Fl
Philadelphia, PA 19106-1532
MIL7189750 1

Telephone: (215) 592-4100
Fax: (215) 592-0361
Tax ID Number: 78-0442653

- 2.0 The Corporation hereby exercises the first extension option for the above referenced Agreement in the amount of \$500,000. The following changes are hereby incorporated into the Agreement.

2.1 Effective June 18, 2004, the term for the extension option will be June 18, 2004 to June 17, 2009 and there are two remaining options.

2.2 The total cumulative Agreement amount is increased by \$500,000 from \$1,083,991 to \$1,583,991.

- 3.0 The Parties agree that for services to be performed by Manager under this Agreement, the City of Austin, on behalf of the Corporation, shall pay or provide funds to Manager to pay all Operating Expenses, Emergency Expenditures, Capital

Expenditures, Management Fees, and Performance Compensations according to the terms of the Agreement.

4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Amendment No. 4 is hereby incorporated into and made a part of the above-referenced Agreement.

Signature:

Printed

Name:

Authorized

Representative

Leisure

Management Int'l

701 Market St., 4th Fl

Philadelphia, PA 19106-1532

Date

Jan. 27, 2004

Jesus Olivas

Chairman of the Board

Austin-Rosewood Community

Development Corporation

Date

Jan 28, 2004

Form 802
(revised 09/05)

Return in Duplicate to:
Secretary of State
P.O. Box 12028
Austin, TX 78711-2028
Phone: 512/475-2705
FAX: 512/463-1423
Dial: 7-1-1 for Relay Services
Filing Fee: See Instructions



9.01 Report
Pursuant to Article 1396-9.01,
Texas Non-Profit Corporation Act

This space reserved for filing office use.

FILED
In the Office of the
Secretary of State of Texas

JUN 11 2008

Corporations Section

File Number: 1378404011. The corporation name is: Austin-Rosewood Community Development Corporation2. It is incorporated under the laws of: (set forth state or foreign country) Texas

3. The name of the registered agent is:

☐ A. The registered agent is a corporation (cannot be corporation named above) by the name of:

OR

☒ B. The registered agent is an individual resident of the state whose name is:

Angela	Y	Means	
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>

4. The registered office address, which is identical to the business office address of the registered agent in Texas, is: (use street or building address; see Instructions)

200 South Lamar	Austin	TX	78704
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>

5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>
--	---------------------	----------------------	-------------------------	------------------------

6. The names and addresses of all directors of the corporation are: (A Texas corporation must have at least 3 directors.)
(If additional space is needed, include the information as an attachment to this form for item 6.)

Stuart	Strong			
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>	
4106 Duval Street	Austin	TX	78751	USA
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

Cora	D.	Wright		
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>	
11528 Loweswater Lane	Austin	TX	78758	USA
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

Angela		Means		
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>	
13024 Appaloosa Chase Dr.	Austin	TX	78732	USA
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

7. The names, addresses, and titles of all officers of the corporation are: (A Texas corporation must include a president and a secretary and the same person cannot hold both offices.)

(If additional space is needed, include the information as an attachment to this form for item 7.)

Stuart Strong				Officer Title	
				Chair	
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>		
4106 Duval Street		Austin	TX	78751	USA
<small>Street or Mailing Address</small>		<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

Cora D. Wright				Officer Title	
				Vice Chair	
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>		
11528 Loweswater Lane		Austin	TX	78758	USA
<small>Street or Mailing Address</small>		<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

Angela Means				Officer Title	
				Secretary	
<small>First Name</small>	<small>MI</small>	<small>Last Name</small>	<small>Suffix</small>		
13024 Appaloosa Chase		Austin	TX	78732	USA
<small>Street or Mailing Address</small>		<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

Execution:

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: June 9, 2008


Signature of authorized officer

FORM 802 - Attachment

#6. The names and addresses of all directors of the corporation are:

4. Diana Domeracki
17209 Chadwood Ct.
Austin, TX 78717
5. Dusty McCormick, Ex-Officio
815-A Brazos #465
Austin, TX 78701
6. Sam Ebomwonyi
9407 Northcreek Drive
Austin, TX 78753
7. Gina Saenz, Ex-Officio
10605 Carovilli Drive
Austin, TX 78748-2366



The State of Texas

Secretary of State

NOV. 21, 1995

DONNA DESTRICK CITY ATTY'S OFFICE
114 W. 7TH ST., 5TH FL
AUSTIN ,TX 78733

RE:
AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION

CHARTER NUMBER 01378404-01

IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD THE ARTICLES OF INCORPORATION THAT CREATED YOUR CORPORATION. WE EXTEND OUR BEST WISHES FOR SUCCESS IN YOUR NEW VENTURE.

AS A CORPORATION, YOU ARE SUBJECT TO STATE TAX LAWS. SOME NON-PROFIT CORPORATIONS ARE EXEMPT FROM THE PAYMENT OF FRANCHISE TAXES AND MAY ALSO BE EXEMPT FROM THE PAYMENT OF SALES AND USE TAX ON THE PURCHASE OF TAXABLE ITEMS. IF YOU FEEL THAT UNDER THE LAW YOUR CORPORATION IS ENTITLED TO BE EXEMPT YOU MUST APPLY TO THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE EXEMPTION. THE SECRETARY OF STATE CANNOT MAKE SUCH DETERMINATION FOR YOUR CORPORATION.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.



RECEIVED

DEC 14 1995

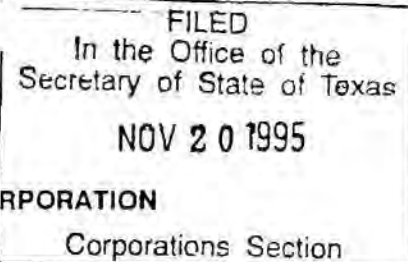
VERY TRULY YOURS,

Antonio O. Garza, Jr., Secretary of State

ARTICLES OF INCORPORATION

OF

AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION



We, the undersigned natural persons, each of whom is at least eighteen (18) years of age or more, and a resident and a qualified voter of the City of Austin, Texas (the "City") and a citizen of the State of Texas (the "State"), acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), and Chapter 394, Texas Local Government Code ("Chapter 394"), do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I

The name of the corporation is AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION.

ARTICLE II

The Corporation is a public non-profit corporation.

ARTICLE III

The period of its duration is perpetual.

ARTICLE IV

The Corporation is organized and will be operated exclusively for one or more charitable purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, the Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the City in the performance of its essential governmental functions to promote the common good and general welfare of the City. In accomplishment of such purposes, the Corporation will: (i) develop, construct, acquire, own and operate community development projects, including recreational facilities; (ii) promote, develop, encourage and maintain employment, commerce and economic development in the City; and (iii) perform any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, fostering, or attainment of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.

The Corporation is formed pursuant to the provisions of the Act and Chapter 394, which authorize the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purposes for its creation.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to non-profit corporations incorporated under the Act, including, without limitation, Article 1396, Sections 1.01 through 11.01, Vernon's Texas Civil Statutes, the Texas Non-Profit Corporation Act.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in the State and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes

or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code.

ARTICLE V

The Corporation shall have no members and shall have no stock.

ARTICLE VI

All powers of the Corporation shall be vested in a Board of Directors (the "Board") consisting of five (5) persons. The initial directors of the Corporation ("Director" or "Directors") shall be those persons named in Article VIII. Each initial Director named in Article VIII hereof shall serve for the term expiring on the date set forth in Article VIII. Subsequent Directors shall be appointed to the Board by the City Council of the City. Except as provided in the Articles of Incorporation, each Director shall serve for the term provided in the Bylaws. Any Director may be removed from office at any time, with or without cause, by the City Council of the City. The number of Directors may be increased or decreased only by an amendment to these Articles of Incorporation; and the number of Directors may never be decreased to less than three (3).

To be qualified to serve as a Director, a person must be a resident of the City and be at least 18 years old. The City Council shall designate the Chairperson of the Board.

The City Council may appoint the number of ex-officio, non-voting members of the Board that is desired.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with these Articles of Incorporation, or the laws of the State.

ARTICLE VII

The street address of the initial registered office of the Corporation is City of Austin Parks and Recreation Department Building, 200 South Lamar, Austin, Texas, 78704, and the name of its initial registered agent at such address is Michael J. Heitz.

ARTICLE VIII

The number of Directors initially constituting the Board is five (5). The names, addresses, positions, and terms of office of the initial Directors, each of whom resides within the City, are:

<u>POS.</u>	<u>NAME</u>	<u>ADDRESS</u>	<u>TERM EXPIRES</u>
1.	Gregory L. Smith	5106 Nesting Way, Austin, Texas 78744	January 1, 1997
2.	Nathan R. Schneider	303 Leland, Austin, Texas 78704	January 1, 1997
3.	Heather Griffith Peterson	6503 Nasco, Austin, Texas 78757	January 1, 1998
4.	Barbara Nickle	6600 La Concha Pass, Austin, Texas 78749	January 1, 1998
5.	Michael J. Heitz	1540 Visalea Lane, Austin, Texas 78727	January 1, 1998

ARTICLE IX

The names and street addresses of the incorporators, each of whom resides within the City, are:

<u>NAME</u>	<u>ADDRESS</u>	
Michael J. Heitz	1540 Visalea Lane, Austin, Texas 78727	January 1, 1998
Gregory L. Smith	5106 Nesting Way, Austin, Texas 78744	January 1, 1997
Nathan R. Schneider	303 Leland, Austin, Texas 78704	January 1, 1997

ARTICLE X

To the fullest extent permitted by Texas statutes, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a Director shall not be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director. Any repeal or amendment of this Article X by the Directors shall be prospective only and shall not adversely effect any limitation on the personal liability of a Director existing at the time of such repeal or amendment.

ARTICLE XI

Regardless of any other provisions of these Articles of Incorporation or the laws of the State, the Corporation shall not (1) permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes), (2) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, (3) participate in, or intervene in (including the publication or distribution of statements), any political campaigns on behalf of or in opposition to any candidate for public office or (4) attempt to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drives. Any income earned by the Corporation after payment of reasonable expenses, debt and establishing a reserve shall accrue to the benefit of the City.

The City shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. No part of the Corporation's income shall inure to the benefit of any private interests.

If the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met and all debts and obligations incurred by the Corporation have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026 of the Texas Local Government Code, or with applicable law then in existence. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the City, unless the City shall otherwise direct.

ARTICLE XII

If the Corporation is a private foundation within the meaning of Section 509(a) of the Code, the Corporation: (a) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

THE STATE OF TEXAS

§

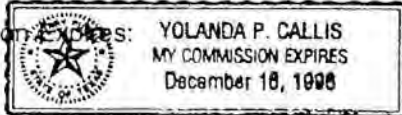
COUNTY OF TRAVIS

§

BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Heitz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 16th day of Nov., 1995

My Commission Expires:



Yolanda P. Callis

Notary Public in and for
The State of Texas

THE STATE OF TEXAS

§

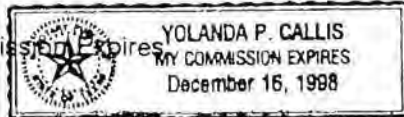
COUNTY OF TRAVIS

§

BEFORE ME, the undersigned authority, on this day personally appeared Gregory L. Smith, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 16th day of Nov., 1995

My Commission Expires:



Yolanda P. Callis

Notary Public in and for
The State of Texas

THE STATE OF TEXAS

§

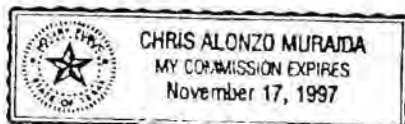
COUNTY OF TRAVIS

§

BEFORE ME, the undersigned authority, on this day personally appeared Nathan R. Schneider, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20th day of November, 1995

My Commission Expires:



Chris Alonzo Murada

Notary Public in and for
The State of Texas



Amendment No. 9
to
Contract No. NA080000157
for
Millennium Youth Entertainment Complex Operations
between
LMI-HHI, Ltd.
dba Millennium Youth Entertainment Complex
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor name and tax ID change as requested and documented by the vendor. This change was the result of a merger.

	From	To
Vendor Name	LMI-HHI, Ltd. dba Millennium Youth Entertainment Complex	SMG
Vendor Code	MIL7139750	V000000929043
FEIN	[REDACTED]	[REDACTED]

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 9 is hereby incorporated into and made a part of the Contract.

Corporate Contract Compliance Manager
City of Austin, Purchasing Office

Date 4/21/15

BUSINESS COMBINATION AGREEMENT

This BUSINESS COMBINATION AGREEMENT (this "Agreement") is entered into as of March 13, 2000 (the "Effective Date") by and among LMI/SCM, LTD., a Texas limited partnership ("LMI/SCM"), SCM Holdings, Inc., a Texas corporation ("SCM"), HHI/LMI FLORIDA, INC., a Florida corporation ("HHI"), DECOMA INVESTMENT INC., III, a Texas corporation ("DII") (LMI/SCM, SCM, HHI, and DII are sometimes hereinafter collectively referred to as the "LMI Owners"), SMG/LMI, L.L.C., a Delaware limited liability company ("SMG/LMI"), and SMG, a Pennsylvania general partnership ("SMG" and SMG/LMI are sometimes herein collectively referred to as "Buyers").

WITNESSETH:

WHEREAS, the LMI Owners are the partners of LMI/HHI, LTD., a Texas limited partnership ("LMI"), with LMI/SCM owning a forty-nine and one-half of one percent (49.5%) limited partnership interest in LMI, SCM owning a one-half of one percent (0.5%) general partnership interest in LMI, HHI owning a one-half of one percent (0.5%) general partnership interest in LMI, and DII owning a forty-nine and one-half of one percent (49.5%) limited partnership interest in LMI; and

WHEREAS, LMI manages and operates the multi-purpose sports, entertainment, trade-show, convention, and other public assembly facilities set forth on Schedule 1 hereto (collectively, the "Facilities" and singularly, a "Facility"); and

WHEREAS, Buyers and the LMI Owners by this Agreement wish to set forth the terms and conditions upon which Buyers agree to purchase from the LMI Owners and the LMI Owners agree to sell to Buyers one hundred percent (100%) of the partnership interests in LMI:

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid and other good and valuable consideration to be paid hereunder and the mutual benefits to be derived herefrom, the parties hereto hereby agree as follows:

DEFINITIONS

Except as otherwise set forth in this Agreement, initially capitalized terms used in this Agreement shall have the meanings set forth below:

"Account" shall mean, as at any date of determination, all "accounts" (as such term is defined in the UCC) of LMI or any LMI Subsidiary, including, without limitation, the unpaid portion of the obligation of a customer of LMI or an LMI Subsidiary in respect of the rendition of services by LMI or such LMI Subsidiary, as stated on the respective invoice of LMI or such LMI Subsidiary, net of any credits, rebates, or offsets owed to such customer.

"Adjustment Amount" shall mean the present value (discounted at the annual rate of ten percent [10%] over the initial term plus any guaranteed renewal term thereof) of all base fee

BUSINESS COMBINATION AGREEMENT

by and among

**LMI/SCM, LTD., SCM HOLDINGS, INC.,
HHI/LMI FLORIDA, INC., and
DECOMA INVESTMENT, INC., III,
as the "LMI Owners"**

and

**SMG/LMI, L.L.C. and SMG,
as the "Buyers"**

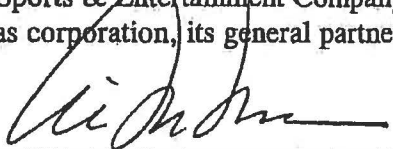
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement as of the day and year first written above.

NOTICE: THE PARTIES TO THIS AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT CONTAINS INDEMNIFICATION OBLIGATIONS, ASSUMPTIONS OF LIABILITY AND RELEASES, IN ARTICLES VII AND VIII.

The LMI Owners:

LMI/SCM, LTD., a Texas limited partnership

By: **SCM Sports & Entertainment Company, Inc.,**
a Texas corporation, its general partner

By: 
William M. McGee, President

SCM HOLDINGS, INC., a Texas corporation

By: 
William M. McGee, President

HHI/LMI FLORIDA, INC., a Florida corporation

By: _____
Chris V. Branden, President

DECOMA INVESTMENTS, INC., III,
a Texas corporation

By: _____
Chris V. Branden, President

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement as of the day and year first written above.

NOTICE: THE PARTIES TO THIS AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT CONTAINS INDEMNIFICATION OBLIGATIONS, ASSUMPTIONS OF LIABILITY AND RELEASES, IN ARTICLES VII AND VIII.

The LMI Owners:

LMI/SCM, LTD., a Texas limited partnership

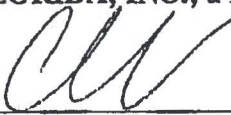
By: SCM Sports & Entertainment Company, Inc.,
a Texas corporation, its general partner

By: _____
William M. McGee, President


SCM HOLDINGS, INC., a Texas corporation

By: _____
William M. McGee, President

HHI/LMI FLORIDA, INC., a Florida corporation

By:  _____
Chris V. Branden, President
via

**DECOMA INVESTMENTS, INC., III,
a Texas corporation**

By:  _____
Chris V. Branden, President

THE BUYERS:

SMG:

SMG, a Pennsylvania general partnership

By: H. W. Wintley
Title: President

SMG/LMI, L.L.C., a Delaware limited liability company

By: SMG, its sole member

By: H. W. Wintley
Title: President

AMENDMENT TO FACILITY MANAGEMENT AGREEMENT

THIS AMENDMENT TO FACILITY MANAGEMENT AGREEMENT (this "Amendment") is effective as of May 10, 2013, by and between AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION ("CORPORATION"), and SMG, a Pennsylvania general partnership ("SMG").

BACKGROUND

CORPORATION and SMG are parties to that certain Facility Management Agreement effective as of October 1, 2009, (the "Management Agreement"), whereby SMG has been retained by CORPORATION to, among other things, manage, operate and promote the Millennium Youth Entertainment Complex (the "Facility") on the terms provided therein.

As the Management Agreement provides for extensions or renewals thereof, the parties desire to extend the term of the Management Agreement for an additional five year extension, on the terms and conditions contained in this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Management Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendment to Management Agreement. Per Section 2.3 of the Management Agreement, the term is hereby extended for an additional five year period, commencing October 1, 2014 and ending on September 30, 2019.

2. Effect of Amendment. Except as amended in paragraph 1 hereof, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.


3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to otherwise applicable principles of conflicts of law.

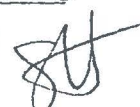

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute but one and the same agreement. Delivery of a copy of this Amendment bearing an original signature by facsimile transmission or by electronic mail in "portable document format" shall have the same effect as physical delivery of the paper document bearing the original signature.


5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter this Amendment and to perform its respective obligations hereunder.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto and is effective as of the day and year first above written.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Sara Hensley
President, Austin-Rosewood Community
Development Corporation

Date: ~~July 12, 2013~~
May 29, 2013 
 SMG

By: 
Name: John F. Burns
Title: Chief Financial Officer

Date: 6-10-13

AMENDMENT TO FACILITY MANAGEMENT AGREEMENT

THIS AMENDMENT TO FACILITY MANAGEMENT AGREEMENT (this "Amendment") is effective as of January 31, 2012, by and between AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION ("CORPORATION"), and SMG, a Pennsylvania general partnership ("SMG").

BACKGROUND

CORPORATION and SMG are parties to that certain Facility Management Agreement effective as of October 1, 2009, (the "Management Agreement"), whereby SMG has been retained by CORPORATION to, among other things, manage, operate and promote the Millennium Youth Entertainment Complex (the "Facility") on the terms provided therein.

As the Management Agreement provides for extensions or renewals thereof, the parties desire to extend the term of the Management Agreement for another two year extension, on the terms and conditions contained in this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Management Agreement.


NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendment to Management Agreement. Per Section 2.3 of the Management Agreement, the term is hereby extended for an additional two year period, commencing October 1, 2012 and ending on September 30, 2014.
2. Effect of Amendment. Except as amended in paragraph 1 hereof, the Management Agreement and all terms and conditions thereof shall remain unaltered and in full force and effect and are hereby ratified and confirmed in all respects, as hereinabove amended. Any reference in the Management Agreement or in any instrument, document or consideration executed or delivered pursuant to the Management Agreement to "this Agreement", "hereof", "hereto", and "hereunder" and similar references thereto shall be deemed and construed to be a reference to the Management Agreement, as amended by this Amendment.
3. Governing Law. This Amendment will be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to otherwise applicable principles of conflicts of law.
4. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute but one and the same agreement. Delivery of a copy of this Amendment bearing an original signature by facsimile transmission or by electronic mail in "portable document format" shall have the same effect as physical delivery of the paper document bearing the original signature.

5. Power and Authority. Each party hereby represents and warrants to the other that each has full legal right, power and authority to enter this Amendment and to perform its respective obligations hereunder.


IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto and is effective as of the day and year first above written.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Sara Hensley
President, Austin-Rosewood Community
Development Corporation

Date: 6/14/12

SMG

By: 
Name: _____
Title: John F. Burns
Chief Financial Officer
Date: 6-25-12



WORLDWIDE ENTERTAINMENT AND
CONVENTION VENUE MANAGEMENT

HARRY CANN
Senior Regional Vice President

P: 610.729.7921
C: 215.285.1594
F: 610.729.1596
hcann@smgworld.com
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428
www.smgworld.com

February 29, 2012

Sara Hensley
Authorized Representative
ARCDC
200 South Lamar
Austin, TX 78704

Dear Sara,

As the Manager for the Millennium Youth Entertainment Complex (MYEC) for the ARCDC, attached is the FY 2013 MYEC budget. The submitted 2013 budget will remain at the previous \$663,000 that has been approved by the City of Austin Council in recent years.

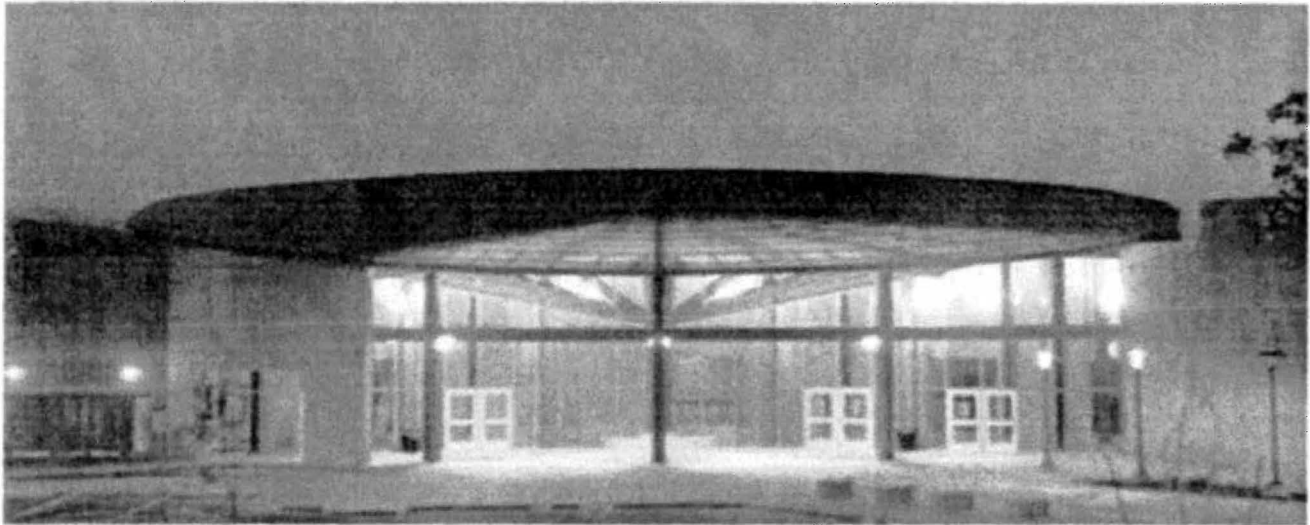
Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Cann", is positioned above the typed name.

Harry Cann
Senior Regional Vice President
SMG Authorized Representative

Cc: Angela Means, ARCDC
Vanessa Silas, SMG - MYEC



**Millennium Youth Entertainment Complex
Proposed Annual Operating Budget Fiscal Year 2013**

Distribution February 29, 2012

**ARCDC BOARD
SMG/MYEC**

2013 Budget

Presented By:

Vanessa M. Silas, General Manager

Thuy Duong, Finance Manager

Jon Daich, Regional Finance Director

1156 Hargrave Austin, Texas 78702 PH (512) 472-6932 FAX (512) 478-4193
www.myec.net



Millennium Youth Entertainment Complex
Budget FYE 9/30/2013

Page 1-2

REVENUE-UNRESTRICTED

Bowling	Lane and shoe rental	\$	59,312
	Special Events	\$	14,000
Skating	Fees and skate rental	\$	87,145
	Special Events	\$	23,640
Movie	Tickets	\$	6,750
	Special Events	\$	17,788
Arcade	Game comissions	\$	25,000
	Special Events	\$	3,390
East Room	Special Events	\$	5,588
	Admission Fees	\$	450
Others	Birthday parties	\$	8,559
	Facility Rental Fees	\$	50,000
	Misc. Income	\$	1,000
	Advertising	\$	1,000
Food & Beverage	Sales	\$	91,501
	Special Events	\$	29,266
Total Unrestricted Revenues		\$	<u>424,389</u>

***REVENUE RESTRICTED**

COA City Council Prior Approvals(2010-11-12)	\$	663,000
Recommended Additional Contribution by ARCDC	\$	15,607
Total ARCDC Board Approval(2011-2012)	\$	678,607

TOTAL OPERATING REVENUES \$ 1,102,996

* Not inclusive of Capital Expenditure Funding (Facility Improvements)

* SMG, Authorized Representative, confirmed \$663,000

EXPENSES

Bowling	\$	80,816
Skating	\$	57,300
Movie	\$	22,066
Arcade	\$	3,000
East Room	\$	500
Others	\$	7,500
Food & Beverage	\$	134,792
Administrative	\$	<u>797,022</u>
OPERATING TOTAL EXPENSES	\$	<u><u>1,102,996</u></u>
OPERATING PROFIT/(LOSS)	\$	(0)

**Millennium Youth Entertainment Complex
Budget FYE 9/30/2013**

Page 3-7

Bowling

Revenues:

Lane Rental	\$	49,000
Shoe Rental	\$	10,312
Bowling Special Events	\$	14,000

Total Bowling Revenues	\$	73,312
------------------------	-----------	---------------

Expenses:

Salaries-F/T	\$	33,145
Salaries-P/T	\$	18,300
Contract Labor	\$	10,920
Benefits	\$	13,451
Benefits 401K		
Supplies & Purchases	\$	2,500
Equipment Repair/Maintenance	\$	2,500

Total Bowling Expenses	\$	80,816
------------------------	-----------	---------------

Net Bowling Income(Loss)	\$	(7,504)
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Skating

Revenues:

Session Fees	\$	82,000
Skate Rental	\$	5,145
Skating Special Events	\$	23,640

Total Skating Revenues	\$	110,785
------------------------	-----------	----------------

Expenses:

Salaries-F/T	\$	29,451
Salaries-P/T	\$	10,938
Benefits	\$	12,719
Benefits 401K		
Supplies & Purchases	\$	1,992
Equipment Rental	\$	-
Contract Pay	\$	1,200
Equipment Repair/Maintenance	\$	1,000

Total Skating Expenses	\$	57,300
------------------------	----	--------

Net Skating Income	\$	53,485
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Theater

Revenues:

Ticket Revenue	\$	6,750
Theater Special Events	\$	17,788

Total Theater Revenues	\$	24,538
------------------------	----	--------

Expenses:

Salaries-F/T	\$	9,358
Benefits	\$	2,997
Supplies & Purchases	\$	700
Film Rental	\$	5,000
Film Booking Agent	\$	1,800
Film Advertising	\$	210
Equipment Repair/Maintenance	\$	500
Shipping	\$	1,500

Total Expenses	\$	22,066
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Net Theater Income(Loss)	\$	2,472
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Soft Play/East Room

Revenues:

Soft Play Admission Fees	\$	450
East Room Special Events	\$	5,588

Total Revenues	\$	6,038
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Expenses:

Equipment Repair/Maintenance	\$	500
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Total Expenses	\$	500
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Net East Room Income	\$	5,538
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Arcade

Revenues:

Arcade Game Commissions	\$	25,000
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Arcade Special Events	\$	3,390
Total Arcade Revenues	\$	28,390

Expenses:

Arcade Labor	\$	-
Benefits	\$	-
Arcade Purchase-Amu.Tax	\$	3,000

Total Arcade Expenses	\$	3,000
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Net Arcade Income	\$	25,390
--------------------------	-----------	---------------

Food & Beverage

Revenue:

F&B Sales	\$	87,255
Vending Machine Revenue(Coke)	\$	3,687
F&B Discount	\$	-
F&B Special Events	\$	29,266
Vending Machine(MYEC)	\$	559

Total F&B Revenues	\$	120,767
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Expenses:

Salaries-F/T	\$	22,598
Salaries-P/T	\$	27,475
Benefits	\$	8,822
F & B Purchases	\$	40,662
Contract Labor	\$	19,255
Food Purchase, Special events	\$	6,927
Kitchen Cleaning Supplies	\$	5,353
Equipment Rental	\$	200
Equipment Repair/Maintenance	\$	3,500

Total F & B Expenses	\$	134,792
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Net Food & Beverage Income(Loss)	\$	(14,025)
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Other Income Sources

Revenue:

B-Day Party Admin. Fee	\$	8,559
Advertising	\$	1,000

Special Events Services	\$	50,000
Misc Income	\$	1,000

Total Other Revenues	\$	60,559
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Expenses:

Other Special Events Expense	\$	1,000
Birthday Party Supplies	\$	6,500
Birthday Party T Shirts		

Total Expenses	\$	7,500
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Net Other Income	\$	53,059
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Operating Profit/Loss	\$	118,415
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Revenue Total	\$	424,389
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Administrative Expenses

Admin-Salaries - Full Time	\$	342,065
Admin-Salaries - Part Time	\$	19,084
Admin-Benefits	\$	89,243
Admin-Benefits 401(K)	\$	8,500
A-Auto Allowance	\$	5,050
A-Employee Recuitment	\$	250
A-Employee Training	\$	1,500
A-Temporary Help	\$	1,200
A-Entertainment	\$	250
A-Travel /Mileage Expense/Reimb.	\$	4,000
A-Management Fees	\$	100,000
A-Legal Fees	\$	2,000
A-Other Professional Fees	\$	500
A-Contractor Fees	\$	-
A-Payroll Processing Fees	\$	1,878
A-Audit Fees	\$	7,000
A-Furn/Fixture-Non Capital	\$	1,000
A-Office Equip-Non Capital	\$	600
A-Computer Equip-Non Capital	\$	1,500
A-Computer Software-NonCapital	\$	1,000
A-Computer Maintenance	\$	6,000
A-Cellular Telephone	\$	2,244
A-Internet Access	\$	2,500
A-Telephone Repair/Maintenance	\$	400
A-Printing & Stationery	\$	264

A-Office Supplies	\$	5,751
A-Data Communications Costs	\$	500
A-Postage	\$	500
A-Delivery & Freight	\$	1,800
A-Office/storage Rental Equipment	\$	8,000
Marketing Research	\$	150
A-Advertising-Expense	\$	30,000
A-Web Page Costs	\$	1,200
A-Marketing Misc.	\$	75
A-Brochures & Printed Mtrls.	\$	4,500
A-Equipment Repair/Maintenance	\$	1,500
A-Insurance - Liability	\$	15,000
A-Insurance - Property	\$	14,335
A-Insurance - Workers' Comp	\$	18,000
A-Subscriptions/Lic.	\$	800
A-Memberships & Dues	\$	1,500
A-Conference Registration	\$	500
A-Bank Service Charges	\$	6,812
A-Client Gifts & Cards	\$	100
A-Electrical	\$	974
A-Hardware	\$	100
A-Housekeeping Bulbs/Filters	\$	4,600
A-Housekeeping Supplies/Paper	\$	9,000
A-Janitorial Services	\$	350
A-HVAC	\$	7,500
A-Painting & Decorating	\$	1,000
A-Plumbing	\$	1,000
A-Uniforms	\$	1,000
A-Security Equipment	\$	200
A-First Aid Supplies/Equipment	\$	1,000
A-Attractions Maintenance	\$	15,000
A-Fire Alarm System	\$	5,331
A-Marquee	\$	500
A-Pest Control	\$	1,200
A-Radios	\$	300
A-Security	\$	8,652
A-Refuse Removal	\$	3,864
A-Landscaping	\$	20,000
A-Generator	\$	1,200
A-Computer System Contracts	\$	5,200
Total Administrative Expenses	\$	797,022
Net Income/(Loss)	\$	(678,607)

Millennium Youth Entertainment Complex
2013 Activities Fee Schedule,excluding Sales tax

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MYEC Bowling 200

Prices per Person	Line Item
2013	
\$ 3.50	Bowl Adult
\$ 2.50	Bowl Child
\$ 0.50	Bowl Shoe Rental
\$ 1.99	Friday Family Bowl
\$ 1.00	Friday Family Shoe
\$ 4.50	Weekend Adult Bowl
\$ 3.50	Weekend Child Bowl
\$ 0.50	Weekend Bowl Shoe
\$ 2.75	Group Bowl 10-75
\$ 2.50	Group Bowl 75 +
\$ 2.25	Group 2nd Game

East End Arena

Prices per Person	Line Item
2013	
\$ 0.99	Skate observer
\$ 4.00	Skate Adult
\$ 3.50	Skate Child
\$ 0.50	Skate Rental
\$ 3.00	Friday Family Skate
\$ 3.50	Skate Group 10-75
\$ 3.00	Skate group 75+

MYEC Birthdays

Prices per Person	Line Item
2013	
\$ 9.50	Millennium B-day Party
\$ 13.00	Grand Millennium party

MYEC Movie Ticket Admission

Prices per Person	Line Item
2013	
\$ 6.00	Adult Admission
\$ 4.00	Child Admission

* Food & Beverage prices may variable increasing depending on food vendors' cost.

Millennium Youth Entertainment Complex
Budget FYE 9/30/2013

Bowling

Revenues:

Lane Rental	\$	49,000
Shoe Rental	\$	10,312
Bowling Special Events	\$	14,000
Total Bowling Revenues	\$	73,312

Expenses:

Salaries-F/T	\$	33,145
Salaries-P/T	\$	18,300
Contract Labor	\$	10,920
Benefits	\$	13,451
Benefits 401K	\$	-
Supplies & Purchases	\$	2,500
Equipment Repair/Maintenance	\$	2,500
Total Bowling Expenses	\$	80,816
Net Bowling Income(Loss)	\$	(7,504)

**Millennium Youth Entertainment Complex
Budget FYE 9/30/2013**

Skating

Revenues:

Session Fees	\$	82,000
Skate Rental	\$	5,145
Skating Special Events	\$	23,640

Total Skating Revenues	\$	110,785
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Expenses:

Salaries-F/T	\$	29,451
Salaries-P/T	\$	10,938
Benefits	\$	12,719
Benefits 401K	\$	-
Supplies & Purchases	\$	1,992
Equipment Rental	\$	-
Contract Pay	\$	1,200
Equipment Repair/Maintenance	\$	1,000

Total Skating Expenses	\$	57,300
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Net Skating Income	\$	53,485
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**Millennium Youth Entertainment Complex
Budget FYE 9/30/2013**

Theater

Revenues:

Ticket Revenue	\$	6,750
Theater Special Events	\$	17,788
Total Theater Revenues	\$	24,538

Expenses:

Salaries-F/T	\$	9,358
Benefits	\$	2,997
Supplies & Purchases	\$	700
Film Rental	\$	5,000
Film Booking Agent	\$	1,800
Film Advertising	\$	210
Equipment Repair/Maintenance	\$	500
Shipping	\$	1,500
Total Expenses	\$	22,066
Net Theater Income(Loss)	\$	2,472

**Millennium Youth Entertainment Complex
Budget FYE 9/30/2013**

Arcade

Revenues:

Arcade Game Commissions	\$	25,000
Arcade Special Events	\$	3,390

Total Arcade Revenues	\$	28,390
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Expenses:

Arcade Labor	\$	-
Benefits	\$	-
Arcade Purchase-Amu.Tax	\$	3,000

Total Arcade Expenses	\$	3,000
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Net Arcade Income	\$	25,390
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**Millennium Youth Entertainment Complex
Budget FYE 9/30/2013**

Soft Play/East Room

Revenues:

Soft Play Admission Fees \$ 450

East Room Special Events \$ 5,588

Total Revenues	\$ 6,038
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Expenses:

Equipment Repair/Maintenance \$ 500

Total Expenses	\$ 500
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Net East Room Income	\$ 5,538
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Millennium Youth Entertainment Complex
Budget FYE 9/30/2013

Other Income Sources

Revenue:

B-Day Party Admin. Fee	\$	8,559
Advertising	\$	1,000
Special Events Services	\$	50,000
Misc Income	\$	1,000

Total Other Revenues	\$	60,559
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Expenses:

Other Special Events Expense	\$	1,000
Birthday Party Supplies	\$	6,500
Birthday Party T Shirts	\$	-

Total Expenses	\$	7,500
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Net Other Income	\$	53,059
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Millennium Youth Entertainment Complex
Budget FYE 9/30/2013

Food & Beverage

Revenue:

F&B Sales	\$	87,255
Vending Machine Revenue(Coke)	\$	3,687
F&B Discount	\$	-
F&B Special Events	\$	29,266
Vending Machine(MYEC)	\$	559

Total F&B Revenues	\$	120,767
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Expenses:

Salaries-F/T	\$	22,598
Salaries-P/T	\$	27,475
Benefits	\$	8,822
F & B Purchases	\$	40,662
Contract Labor	\$	19,255
Food Purchase, Special events	\$	6,927
Kitchen Cleaning Supplies	\$	5,353
Equipment Rental	\$	200
Equipment Repair/Maintenance	\$	3,500

Total F & B Expenses	\$	134,792
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Net Food & Beverage Income(Loss)	\$	(14,025)
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Millennium Youth Entertainment Complex
Budget FYE 9/30/2013

Administrative Expenses

Admin-Salaries - Full Time	\$	342,065
Admin-Salaries - Part Time	\$	19,084
Admin-Benefits	\$	89,243
Admin-Benefits 401(K)	\$	8,500
A-Auto Allowance	\$	5,050
A-Employee Recruitment	\$	250
A-Employee Training	\$	1,500
A-Temporary Help	\$	1,200
A-Entertainment	\$	250
A-Travel /Mileage Expense/Reimb.	\$	4,000
A-Management Fees	\$	100,000
A-Legal Fees	\$	2,000
A-Other Professional Fees	\$	500
A-Contractor Fees	\$	-
A-Payroll Processing Fees	\$	1,878
A-Audit Fees	\$	7,000
A-Furn/Fixture-Non Capital	\$	1,000
A-Office Equip-Non Capital	\$	600
A-Computer Equip-Non Capital	\$	1,500
A-Computer Software-NonCapital	\$	1,000
A-Computer Maintenance	\$	6,000
A-Cellular Telephone	\$	2,244
A-Internet Access	\$	2,500
A-Telephone Repair/Maintenance	\$	400
A-Printing & Stationery	\$	264
A-Office Supplies	\$	5,751
A-Data Communications Costs	\$	500
A-Postage	\$	500
A-Delivery & Freight	\$	1,800
A-Office/storage Rental Equipment	\$	8,000
Marketing Research	\$	150
A-Advertising-Expense	\$	30,000
A-Web Page Costs	\$	1,200
A-Marketing Misc.	\$	75
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A-Uniforms	\$	1,000
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A-Generator	\$	1,200
A-Computer System Contracts	\$	5,200
Total Administrative Expenses	\$	<u>797,022</u>

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FACILITY MANAGEMENT AGREEMENT
SECOND EXTENSION AND RESTATEMENT

THIS FACILITY MANAGEMENT AGREEMENT ("**Agreement**") extension as amended is effective October 1, 2009, by and between SMG, a Pennsylvania general partnership ("**Manager**"), and AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government non-profit corporation ("**Corporation**").

This is the second extension of the pre-existing facility management agreement (attached hereto as **Exhibit A**), which is amended in its entirety by the provisions hereof. The pre-existing facility management agreement at **Exhibit A** remains in effect ("**Pre-Existing Agreement**"); provided, however that the parties desire to amend the Pre-Existing Agreement so that it extends through to the end of the current Fiscal Year, September 30, 2009, as set forth below.

RECITALS

The City of Austin ("**City**") owns a 4.978 acre tract of land in Austin, Texas. On November 16, 1995, the City Council adopted a resolution approving the creation of the Corporation under Subchapter D of Chapter 431, Texas Transportation Code, for the purpose, among others, of developing the tract of land.

In 1996, the City entered into a Financing Agreement ("**Financing Agreement**") with Corporation requiring Corporation to construct on such land the Central City Entertainment Center, later renamed the Millennium Youth Entertainment Complex, a public family-oriented entertainment center for youth, which complex with all facilities, machinery, attachments, and appurtenances now or hereafter attaching thereto, is hereafter referred to as the "**Facility**," Section 4.3 of the Financing Agreement, creating certain affirmative covenants from the Corporation to the City, is attached as **Exhibit B** and is hereby made a part of this Agreement.

The mission of the Facility was determined by the Austin community and confirmed through the City of Austin Council appointed committee, The Central City Entertainment Center Committee. The mission, as recorded, is to provide a safe, secure, and comfortable environment (free from drugs, gangs, crime, and violence) where families can enjoy a wide range of affordable, high quality recreational and entertainment activities and attractions ("**Mission**").

The Facility is a 55,000 square foot facility. Entertainment and recreational activities and attractions are represented in the following activity centers: 16 lanes of Bowling, a roller skating (entertainment) arena, a video arcade, 154 seat movie theater, and a food court. These cost centers are represented in the annual facility budget described below.

It is Corporation's intention that the Facility shall be operated in a professional manner within the Mission, while attempting to maximize the utilization of and revenues produced by the Facility for the benefit of Corporation and Attempting to minimize, to the extent reasonable and practicable, the net cost to Corporation.

In 1996, the City issued RFP No. KM96300004, requesting proposals for Facility management. The City issued two RFP addenda.

Corporation, after reviewing proposals received from private entities for pre-opening consulting and planning services and for post-opening Facility management services, selected LMI/HHI, LTD., d/b/a/ LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership, as the best qualified party to provide such services for the Facility. Corporation and LMI signed the initial Facility Management Agreement effective March 5, 1997, for a five year term, with the option for up to three five-year extensions.

In 1999, the Corporation and Manager signed agreement Amendment 3, extending the Facility pre-opening date.

In 2000, LMI/HHI, LTD., d/b/a/ LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership, merged with SMG. The merger assigned, with the consent of the City, LMI's role as manager to Manager.

In 2004, the Corporation and Manager signed agreement Amendment 4, which included the exercise of an extension option effective June 18, 2004 to June 17, 2009, with two remaining five-year options.

The Manager holds itself out as an organization whose principals have substantial experience and expertise in the management, operation, and marketing of public assembly facilities.

Corporation has determined to grant to the Manager, and the Manager has agreed to accept, the authority and responsibility to manage, operate, and market the Facility in accordance with the terms of this Agreement, which, as indicated above, is intended to amend in its entirety the Pre-Existing Agreement.

ARTICLE I

DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

1. "Affiliate" of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

2. "Advertising" means all announcements, acknowledgements, banners, signs, showbills, promotional materials, handouts, and promotional product sampling give-aways, and

other audio or visual commercial messages displayed, announced or otherwise presented in the Facility including, without limitation, video messages.

3. "Agreement" means this Facility Management Agreement.
4. "Authorized Representatives" means the individual designated by each party pursuant to Section 2.4.
5. "Base Operating Expense Amount" means the amount designated in each Budget as the "Base Operating Expense Amount" for the Fiscal Year in question.
6. "Base Operating Revenue Amount" means the amount designated in the Budget as the "Base Operating Revenue Amount" for the Fiscal Year in question.
7. "Budget" shall mean any budget to be prepared by Manager and approved by Corporation under the provisions of Article 4.
8. "Capital Expenditures" means all expenditures in excess of One Thousand Dollars (\$1,000) for building additions, alterations, or improvements, and for purchases of additional or replacement furniture, machinery, or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Capital Expenditures Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.
9. "Commencement Date" means the date Corporation and Manager first entered into a facility management agreement for this Facility, March 5, 1997.
10. "Corporation" means the Austin-Rosewood Community Development Corporation.
11. "Depository" means the financial institution in which Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.
12. "Emergency Expenditure" means an unanticipated procurement necessary to preserve or protect the public health or safety of the City's residents.
13. "Event(s)" means all activities and events which are conducted at the Facility and scheduled by the Manager.
14. "Facility" means the Millennium Youth Entertainment Complex, including all of the parking areas and garages appurtenant thereto.
15. "Fiscal Year" means a twelve month period of time beginning on October 1 and ending on the immediately following September 30.

16. "General Manager" means the chief operating officer of Manager at the Facility.
17. "Governmental Entities" means the federal government, the State of Texas, the City of Austin, or any county, municipality (or any entity created by a municipality), governmental, or quasi-governmental entities having jurisdiction or other authority over the Facility.
18. "Management Fees" means the fees payable to Manager under Article 7.
19. "Manager" means SMG.
20. "Material Breach" shall have the meaning provide in Section 10.1.
21. "Material Contract" shall be those contracts which (1) would require Corporation approval; (2) permit a similar user or promoter to utilize the Facility for more than twenty-five (25) event days in any Fiscal Year; or (3) have a term in excess of three (3) years (including renewal options exercisable by any party) and which may not be cancelled by Manager or Corporation without penalty or premium.
22. "Operating Expenses" shall mean and include all expenditures by Manager in any specified period during the Term of this Agreement, within the authority or responsibility of the Manager under this Agreement, including, but not limited to, all payments made to obtain Operating Revenues; salaries, wages and benefits of personnel working at the Facility; contract labor; maintenance and repairs; utilities; telephone; telescreen and/or scoreboard operations; dues, memberships and subscriptions; security; audit fees, legal fees directly related to the performance of this Agreement; other professional fees; fees paid to concessionaires or other subcontractors; refuse removal; cleaning; sales taxes; building supplies; ticket commissions; premiums for insurance maintained under Section 8.1; data processing; Advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Facility related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA, and other credit and debit facilities and telecheck fees and expenses; travel, lodging, and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; all damages, losses, or expenses paid by Manager or its Authorized Representative as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys fees incurred in litigation against Manager or its Authorized Representative under this Agreement; but excluding any Capital Expenditures, amortization, depreciation, and other non-cash charges and any losses, damages, or expenses suffered by Manager or its Authorized Representative as a result of (1) any uninsured negligent act or omission of Manager or its Authorized Representative; (2) any transaction from which Manager or its Authorized Representative derives an improper personal benefit; or (3) any willful Material Breach on the part of Manager.
23. "Operating Fund" shall mean a fund maintained by Manager under Section 5.1.

24. "Operating Loss" shall mean the amount by which Operating Expenses for any specified fiscal period exceed the Operating Revenues for such fiscal period.

25. "Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager (1) for the use of, operation, or admission to, the Facility or any portion thereof; (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licensees; (3) from interest on or proceeds of investment of any accounts required to be maintained under Article 5; (4) for rental or use of the Facility equipment; or (5) as fees for services rendered at the Facility, including parking; but excluding, in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facility.

26. "Operations Start Date" shall mean the later of (1) the date of issuance of a final and unconditional certificate of occupancy or other similar governmental permit or license for the entire Facility or (2) if requested by Corporation, the date of issuance of any temporary certificate of occupancy or similar governmental permit or license permitting an Event to be conducted at the Facility; or (3) the date the Facility actually opens to the public.

27. "Term" shall mean the time period described in Section 2.3.

ARTICLE 2

INTRODUCTION

2.1 Grant of Authority. Corporation hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of the Corporation, to provide those management services to Corporation as are set forth in this Agreement in connection with Manager's management, operation, and administration of the Facility and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such management services all upon the terms and subject to the limitations of this Agreement. Manager and Corporation acknowledge and agree that Manager shall retain control of the Facility as the manager and operator thereof pursuant to this Agreement, but that Manager may delegate certain specific and limited responsibilities related to the management and operation of the Facility to third parties, but shall retain the exclusive authority and responsibility with respect to the management and operation of the Facility.

2.2 Nature of Relationship. The parties agree that the only relationship created by this Agreement is that between Corporation, as owner, and Manager, as an independent contractor, for certain management and operating services assigned to Manager by Corporation and that Manager is an independent contractor, not an agent, employee, joint venturer, or partner of Corporation.

2.3 Term.

a. The term of this Agreement extension is three (3) years (October 1, 2009 to September 30, 2012), with the option for a two (2) year extension (October 1, 2012 to September 30, 2014), subject to the termination rights outlined in this Agreement.

b. Prior to one hundred and eighty (180) days before the expiration of the three year term described in Section 2.3a. above, either party may call for renegotiation. Prior to one hundred and eighty (180) days before the end of the two year extension described in 2.3a., either party may call for renegotiation to extend the agreement. If the parties cannot, through good faith negotiations, reach agreement on the terms and conditions of an extension prior to one hundred and twenty (120) days before expiration, this Agreement shall automatically terminate at the end of the then-current term. In no case may this Agreement be extended for more than three (3) five (5) year extensions, without City Council approval.

2.4 Contract Administration. Corporation hereby appoints the Corporation President and Manager hereby appoints SMG's Regional Vice President (or his or her designee in writing) as their respective Authorized Representatives, each of whom shall act as liaison and contact person between the parties in matters concerning the administration of this Agreement. Each party shall have the right to designate a substitute Authorized Representative by providing written notice to the other party. Except for budget matters, if either party desires to do any act hereunder which requires the other party's approval, such request shall be submitted in writing to the other party's Authorized Representative. The Authorized Representative shall respond to such request within fifteen (15) days after submittal, failing which the request shall be deemed approved. Manager understands and acknowledges that only the Corporation's Authorized Representative shall be authorized to make and/or communicate decisions to the Corporation regarding implementation of this Agreement, and Manager agrees to look exclusively to the Corporation for such input or information as Manager believes is necessary to carry out its duties under this Agreement.

2.5 Authority Regarding Closure of Facility. The parties agree that, in the event Corporation determines that continued operation of the Facility or any portion of the Facility is not feasible, Corporation shall have the authority to close the Facility or portion of the Facility, and Manager agrees to cooperate with Corporation in performing all acts necessary to accomplish such closure. If a portion of the Facility is closed as a result of the Corporation's closure pursuant to the immediately preceding sentence and not as a result of either Force Majeure or a temporary closing of the part of the Facility resulting from seasonal booking of certain Events precluding the booking of other Events, the parties agree that Manager's Management Fee, as described in Section 7.1, shall not be adjusted unless at least one-third of the Facility's public space is closed for more than ninety (90) consecutive days, in which case Manager and Corporation agree to negotiate an equitable adjustment to the Management Fee for the remainder of the time period that such space is not open to the public. If the entire Facility is closed, Corporation shall pay Manager not later than ten (10) calendar days following such

closure the aggregate of (i) all Management Fees owed to Manager as of the date of closure; (ii) all expenses, if any, incurred by Manager and not reimbursed as of such date, to the extent otherwise reimbursable under this Agreement; and (iii) a termination fee of seventy-five thousand dollars (\$75,000.00).

ARTICLE 3

RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the funding limitations set forth in this Agreement, Manager shall exercise its diligent, good faith efforts in managing and operating the Facility so as to minimize Operating Expenses and maximize Operating Revenues. Parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facility, but also those events that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, or other benefit to Corporation or otherwise serve the public interest; provided that Manager shall ensure the Facility is used for a public purpose that furthers the Facility's Mission, and not permit the Facility to be used without a reasonable charge for such use unless fees are specifically waived by a vote of City Council.

3.2 Duty and Liability. Manager shall owe to Corporation a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and Corporation and consistent with the terms of this Agreement. Manager shall not be liable, responsible, or accountable in damages or otherwise to Corporation for any act or omission that is within the scope of its authority under this Agreement, except for (i) acts or omissions constituting negligence which are not covered by insurance; (ii) acts or omissions of Manager not in good faith or involving gross negligence, intentional misconduct, or knowing (i.e., conscious awareness) violation of law, (iii) any transaction from which Manager derives an improper personal benefit, or (iv) any willful Material Breach on the part of the Manager.

3.3 Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement, Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) throughout the Term hereof after the Operations Start Date:

a. Manage and operate the Facility and any facilities ancillary thereto and contract for its use in a manner that will promote and further the purposes for which the Facility is to be constructed, as set forth in the Recitals to this Agreement;

b. Negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements (i) with persons who desire to schedule events, performances, telecasts, broadcasts, or other transmissions in, from, or to the Facility or who desire otherwise to use the Facility or any part thereof or (ii) that otherwise pertain to the use, operation, and occupancy of the Facility or any part thereof.

c. Coordinate (and participate in where necessary or applicable) all advertising, licensing, promotional activities, marketing, and public relations for or at the Facility, including an annual investment of \$15,000 per year of this Agreement (pro-rated in any year this Agreement is in effect for less than a year) in marketing or other priorities, as identified and to be spent in a manner agreed to by Corporation and Manager.

d. Negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements (i) for the use of Advertising space in or about the Facility and all Advertising rights of whatever kind or nature related to the Facility or (ii) for the sale, promotion, marketing, and use of all names, trademarks, trade names, logos, and similar intangible property relating to the Facility;

e. Operate at and for the Facility the sale of food, beverages, souvenirs, novelties, and programs (either in house or through a concessionaire);

f. Select, schedule, and coordinate the efforts of all parties involved in the operation of the Facility and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4;

g. Plan, coordinate, and administer operation of the Facility, including the expansion of activities per Exhibit C, within the constraints of the Budget described below, taking into account the input from the Corporation in the context of such Budget approval process;

h. Continue to identify, select, and train the Facility's staff;

i. Subject to the Budget, retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with Corporation's legal department where necessary or appropriate;

j. Coordinate the work of all parties performing work in connection with the operation of the Facility;

k. Monitor actual and projected Operating Expenses, and advise Corporation of any projected or actual variances from the approved Budget(s) in monthly reports;

l. Make prompt payments of the Operating Expenses from funds available for that purpose under Article 5;

m. Furnish all services necessary to accomplish the foregoing requirements of this Section 3.3;

n. Perform such other consulting, administrative, or management services as reasonably requested by Corporation;

o. Devise and implement procedures reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition, per Section 3.9.

p. Market the sale of seats within the arena portion of the Facility;

q. Prepare monthly and year-to-date management reports regarding the Facility operations by segment and by concession to assist Corporation in planning, budgeting, cost control, performance evaluation, and revenue enhancement. These reports shall include, but will not be limited to, the following:

1. Patron attendance by use;
2. Monthly and year-to-date reports of revenues and expenses as compared to Budget;
3. Analyses of food and beverage concession and catering performance and income for the current period, year-to-date, and prior periods;
4. Analyses of other concession/contractor performance and income;
5. Analyses of event attendance and revenues on a per capita, average, and total basis; and
6. Other statistical reports requested by Corporation.

r. Implement and monitor comprehensive risk management and energy efficiency programs for the Facility;

s. Use reasonable efforts to comply with the Facility's MBE/WBE utilization plan as approved by Corporation and described in City Resolution 20071108-127. Such plans shall be prepared jointly by Corporation and Manager;

t. Maintain, for review by the Corporation upon reasonable notice, information as reasonably required by Corporation to satisfy Corporation's responsibilities, including information regarding injuries and unusual incidents at the Facility, and regarding security measures and safety programs (including recommendations for changes to the budget for such measures/programs) at the Facility;

u. If Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety or the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action and Corporation shall promptly accept (does not trigger obligation to fund) or reject such recommendations; and

v. Summarize all media inquiries to Corporation's authorized representative within 24 hours of interview, per Corporation format at Exhibit D.

3.4 Program Access and Utilization. Manager will exercise its diligence in managing and operating the Facility in a manner that maximizes public access, utilization of the facility, and reflects the community feedback study *The Millennium Youth Entertainment Center Community Focus Group Meeting Report for Austin Rosewood Community Development Corporation and Austin Parks and Recreation Department November 2008*. Manager shall establish annual utilization goals for each program area each year. Manager shall also periodically adapt programming to meet current community priorities and needs, as reflected in Exhibit C.

3.5 Compliance with the Law; Duty. Manager shall comply with all applicable laws, rules, regulations, and ordinances relating to the use and operation of the Facility. Manager shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public entertainment facility would operate. Subject to the foregoing, Manager shall promptly and fully discharge all of its obligations under this Agreement.

3.6 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, Corporation recognizes and agrees that performance by Manager of its responsibilities under Article 3 is subject to and conditioned upon provision of funds to Manager for such purposes as hereinafter provided, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Budgets submitted by Manager and approved by Corporation from time to time. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager to request additional funds from the Corporation as soon as shortfalls are anticipated (except for Emergency Expenditures for which there are adequate funds on hand) and any such request shall be made in writing at least thirty (30) days before such funds are needed. The requirement for a written request for funds shall not apply in the event of a need for an Emergency Expenditure if there is additional funding available in the Operating Fund to cover such Emergency Expenditure. **Manager accepts the limitations of the Budget and agrees that Corporation has no responsibility or duty to provide funds in excess of the approved Budget, as such Budget may be amended from time to time.** If additional funds are deemed necessary by the Corporation, Corporation agrees to request from the City Council of the City of Austin such additional funds.

3.7 No Construction or Design Responsibilities. Notwithstanding Manager's review of and recommendations with respect to the design, plans, and specifications for the Facility, Manager will not have responsibility to Corporation or any other person for or authority concerning the same and will not supervise or be responsible in any manner for construction related to the Facility. The parties acknowledge and agree that Manager shall not be responsible for the selection of architects, contractors, subcontractors, or suppliers; the prosecution of the work; the compliance of the work with the plans and specifications for the Facility or applicable law, rules, regulations, or codes; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement, or renovation of the Facility notwithstanding the obligations of Manager hereunder. Corporation acknowledges that Manager's recommendations, if any, are based solely upon Manager's practical experiences in the operation of public assembly facilities similar to the Facility. Corporation acknowledges and agrees to look to the contractor, subcontractors,

architects, engineers, and other design professionals for all matters related to the design and construction of any such construction work and not to Manager.

3.8 Maintenance and Repair. Maintenance and repair procedures must include a Preventative Maintenance Plan with monthly Progress Reports; submission to Corporation within ten business days of all facility maintenance service contracts; and annual safety inspections. Manager is responsible for overseeing and implementing routine maintenance (anticipated, regular, pro-active attention to upkeep of facilities and machinery) per the Budget, and Corporation is responsible for major capital repairs and improvements (expenditures related to facility and machinery break-down or upgrades). If the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action, per 3.3(u).

3.9 Public Safety and Security. Public safety and security procedures must include a Safety Procedure Manual. Manager must maintain an up-to-date list showing all staff and individuals with security key or code access rights into the building, submitted to Corporation simultaneously with each addition or deletion of any individual to or from the list. If the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action, per 3.3(u).

ARTICLE 4

RECORDS, ACCOUNTS AND REPORTS

4.1 Books/Records. The Manager shall maintain, with respect to its management and operation of the Facility, complete, separate and accurate books of accounts and records of its activities and finances, as reasonably required by Corporation or as required by applicable federal or state law. Such books of account and records shall be prepared and maintained in accordance with generally accepted accounting principles and industry standards.

4.2 Access to Facility Premises/Facility Information. Authorized representatives of Corporation and City shall be issued an identification credential authorizing their access to the Facility. Corporation President and one City facility management official designated by Corporation President shall be issued a key and/or access code for access the Facility; Corporation President and his/her designated City facility management official reserve the right to enter the building at any time with simultaneous telephone notice to Manager. Manager must maintain an up-to-date list of those authorized representatives with copy to Corporation. Upon reasonable prior notice (i.e. not less than twenty-four hour notice) to Manager and presentation of such identification credential, authorized representatives shall have the unqualified right during the hours that the Facility is open to the public and in a manner that is not disruptive to the activities of the Facility to: (a) enter upon Facility property and inspect the property and improvements, and (b) examine, copy, and make extracts of books, records, accounting, and financial data and any other documents or records concerning the management and operation of

the Facility. The Corporation shall each provide Manager with an up-to-date written list of authorized, credentialed representatives (i.e. whenever the list is revised).

4.3 Annual Audit Report & Annual Revenue Accounting Report. Not later than December 31 of each Fiscal Year during the term of this Agreement, the Manager shall furnish to Corporation an annual audit report for the previous Fiscal Year, which shall include a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accounting firm preparing the report, which shall be a firm of national reputation selected jointly by the Manager and Corporation. The engagement letter from the independent firm of certified public accountants shall contain a statement that the Corporation shall receive a copy of all audit work papers produced either by the Manager or the accounting firm during the annual audit of the financial statements. The notes to the audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. The Manager shall deliver to the Corporation, at the same time it delivers the annual audit report, a copy of all of the audit work papers that underlie the audited annual financial statements.

In addition, the Manager shall furnish to the Corporation an annual report on agreed-upon procedures for the Manager's system of revenue accounting, for which report the Corporation shall determine the agreed-upon procedures, all in a manner consistent with the capabilities of the financial software utilized by the Facility.

4.4 Monthly Financial Reports. Within twenty-five (25) calendar days of the end of each calendar month, the Manager shall furnish to Corporation a report regarding the Facility's financial performance during the prior month, including all Operational Expenditures and Operating Revenues, for which report the Corporation shall determine the format and contents, all in a manner consistent with the capabilities of the financial reporting software. Format and contents will include but are not limited to cumulative expenditures and budget comparison to-date with variance; rolling monthly expenditures; anticipated shortfalls; and expense and revenue projections in comparison to fiscal year budgeted amounts.

4.5 Capital Expenditure Budget. Not later than February 1 of each year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a proposed Capital Expenditures Budget for the following Fiscal Year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for Corporation.

4.6 Annual Operating Budget. Not later than February 1 of each year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a proposed annual operating budget for the following Fiscal Year, listing all projected Operating Revenues and Operating Expenses by category and by calendar month, and including a proposed Facility Fee Schedule for City Council approval. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of operating budgets for the Corporation.

4.7 Budget Approval. Corporation shall promptly review all proposed budgets and amendments thereto and communicate to the Manager any comments or suggested revisions thereto. The parties agree to negotiate all budget matters in good faith and to meet at least every two weeks following submission of the proposed budget, or more often as may be necessary, to resolve any outstanding budget issues. If, however, the parties are unable to reach a final agreement in writing by May 1 of any year, notwithstanding the parties' good faith efforts, the Budget for the following Fiscal Year shall be identical to the Budget then in effect.

4.8 Funding Contingency. Notwithstanding the provisions of Section 4.7 hereof, in the event of the non-appropriation of funds by the City to the Corporation in an amount sufficient to enable the Corporation to make all required payments to Manager under this Agreement, Manager shall have the right to either accept such reduced or insufficient funding or, at Manager's election, to terminate this Agreement by written notice to the Corporation given within sixty (60) days following Manager's receipt of notice of such non-appropriated funding. In the event that all appropriations or funds are restored and fully funded by the City to the Corporation for the operation and maintenance of the Facility after this Agreement has been terminated, pursuant to this Section 4.8, Corporation shall provide written notice thereof to Manager whereupon Manager shall have the first right to enter into a new agreement with Corporation on the same terms and conditions set forth herein. In the event Manager elects to exercise such right and option, Manager and Corporation shall promptly thereafter execute and enter into an amendment to this Agreement reinstating the same to its original terms and conditions. Subject to the appropriation of funds by the City, Corporation shall pay to Manager the Management Fees and all expenses and any other sums due and payable to Manager hereunder through and including the date of termination.

4.9 Shortfall. Manager is responsible for anticipating operating budget shortfalls. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager as soon as shortfalls are anticipated to request additional funds from the Corporation and such request shall be made in writing at least thirty (30) days before such funds are needed. A shortfall in and of itself that is not the result of an emergency expenditure does not constitute an emergency for purposes of "emergency expenditures."

ARTICLE 5

FUNDS AND ACCOUNTS

5.1 Operating Fund. After the Operations Start Date, Manager shall collect all Operating Revenues and deposit them in a separate, interest-bearing account maintained by Manager in its name in the Depository (the "Operating Fund"). Manager shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article 5. Monies in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in the Operating Fund in an amount in excess of the anticipated Operating Expenses

for the first month of the ensuing year, Manager shall disburse such excess to Corporation on or before the fifteenth (15th) day of such month, subject to the provisions of Section 7.2 below.

5.2 Corporation Funding. In order to provide the working capital necessary to permit Manager to perform its obligations hereunder with respect to Operating Expenses, Corporation will advance funds to Manager, subject to the terms of this Agreement and available budget, for deposit in the Operating Fund as follows: by no later than the first day of each Fiscal Year, Corporation shall advance to Manager twenty-five percent (25%) of the funds budgeted by the City for the Facility for the Budget year then in effect. Additional twenty-five percent advances will be made on a periodic basis so that the Facility's cash flow needs are met.

5.3 No Obligation of Manager to Advance Funds. Corporation is solely responsible for and shall promptly pay, or provide funds to Manager to enable Manager to pay, all Operating Expenses, Emergency Expenditures, and approved Capital Expenditures, and Manager shall not be obligated to make any advance of its own funds to or for the account of Corporation or to pay any sums incurred for the performance of services or goods delivered to the Facility, nor shall Manager be obligated to incur any liability or obligation for the account of Corporation. Notwithstanding anything to the contrary set forth in this Agreement, the Corporation recognizes and agrees that performance by SMG of its responsibilities under this Agreement is in all respects subject to and conditioned upon the provision of funds to SMG for such purposes as hereinafter provided.

ARTICLE 6

POWER AND FUNCTIONS

6.1 Authority of Manager. Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers, and duties conferred or imposed on Manager of this Agreement. The powers of Manager with respect to the Facility shall be plenary, subject only to the limitations expressly set forth in this Agreement.

6.2 Asset Management. The Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by Corporation or the City. Upon notice from Manager to Corporation of the need to move off-site any movable property that Manager has determined is surplus or unnecessary at the Facility, Corporation will remove such property within three (3) days. Manager shall be obligated to provide Corporation with an accurate annual inventory of all property and non-consumable items located at the Facility with notation of inventory that is no longer in use and cannot be returned to service. A written report regarding stolen or otherwise unaccounted for inventory, including police report number and any other documentation provided by the police, must be made within ten (10) days of Manager becoming aware of the theft or loss.

6.3 Capital Improvements. Except for the Capital Expenditures set forth in the Capital Expenditures Budget and Emergency Expenditures, Manager shall have no authority to

make any material alterations or any capital improvements to the Facility without the prior written consent of the Corporation.

6.4 Contracts. The Manager shall have no authority, without the prior written consent of Corporation, to enter into: (a) any contract for more than the greater of (i) thirty-eight thousand and no/100 dollars (\$38,000.00) or (b) any contract for the provision of goods and/or services to the Facility at any time beyond the expiration date of the term of this Agreement provided, however, that Corporation agrees to cooperate with Manager in connection with the execution of such contracts that would extend beyond the term of this Agreement by executing and delivering agreements with the providers of such goods and services whereby Corporation agrees to honor and observe such contracts following termination of this Agreement. Manager shall have the right to enter into, execute, and deliver contracts with users of the Facility which extend beyond or relate to dates falling after the expiration of the terms of this Agreement. All contracts entered into by Manager shall provide that the same are assignable to Corporation without the vendor's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that Corporation shall have the right to and the Corporation shall assume in writing any or all then outstanding contracts affecting the Facility. In all contractual matters from the date hereof, Manager shall comply with the City's Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program, as described in City Resolution 20071108-127.

6.5 Employees.

a. Employees now or hereafter hired by Manager in connection with the management services provided by Manager shall be employees of Manager and not of Corporation, although the employment costs of such employees (wages, salary, benefits) shall be part of the Operating Expenses. Such employment costs shall be consistent with industry standards in the field of private facility management, at each level of employment. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation, evaluation and other terms and conditions relating to its employees, subject only to the provisions of Section 4.6 of this Agreement.

b. If there is a vacancy in the Facility's on-site General Manager position, Manager shall select the General Manager following consultation with Corporation. The General Manager shall be and remain an employee of the Manager. The General Manager's salary and all other employment costs, including travel to and from meetings, car allowance and other benefits and related employment costs, shall be part of the Budget and Corporation shall reimburse Manager therefore. In the event that Corporation has concerns related to the General Manager, Corporation and Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, Manager shall propose to Corporation a plan to address such concerns. If such plan is not satisfactory to the Corporation, the parties shall continue meeting until a mutually agreeable plan is reached.

c. Corporation covenants and agrees that neither it nor its Authorized Representative shall during the term hereof or for a period of twelve (12) months following the expiration or early termination of this Agreement, hire, employ, solicit for hire, or engage in any manner or for any purpose any person who has served as General Manager during the Term of this Agreement, or any other of Manager's "senior personnel." "Senior personnel" shall mean and refer to the three (3) individuals involved in management who are designated by Manager in a written notice to the Corporation as "senior personnel" for purposes of this Agreement.

6.6 Purchase of Supplies and Services. Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies, and inventories reasonably required by it in the management of the Facility but shall endeavor to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager. Manager may not, without the prior written consent of the Corporation, acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement.

Manager has advised Corporation that Manager performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Facility, Manager may from time to time book the same event at a number of the facilities it operates. If Manager desires to book events at the Facility while at the same time booking said events under the same contract (or one or more contracts executed concurrently) for other facilities for which Manager is providing services, then before finalizing such contract, Manager shall obtain Corporation's approval over the allocation of such contracts' expenses to the Facility. Similarly, if authorized to acquire business services for the Facility, Manager desires to acquire goods or services in bulk for the Facility and one or more of the other facilities for which Manager performs services, Manager shall first obtain Corporation's approval over the allocation of the costs thereof to Facility. Provided, however, Manager shall not allocate or impose any costs or expenses related to its corporate offices or other facilities to the Facility which are not related to Manager's provisions of management services to the Facility. Provided, Corporation's approval under this Section 6.6 shall not be unreasonably withheld or delayed.

6.7 Settlement of Claims. Manager has been advised by Corporation of (and Corporation shall continually keep Manager apprised of) Corporation's procedures and requirements in respect to settlement of third party claims filed against Corporation or with respect to the Facility. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by Corporation so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of civil or criminal penalty against Manager. Manager and Corporation agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, all costs and expenses thereof, including the settlement thereof, to be deemed an Operating Expense if the Corporation agrees to such settlement (unless covered by insurance, in which case the Corporation shall be deemed to consent) in accordance with the terms and provisions of this Agreement.

6.8 Concession and Service Contracts. Manager shall obtain the Corporation's prior approval of the standard contract form, and of any material variations thereto, to be entered into by and between Manager and third parties for the provision of the food and beverage concession or services for the Facility. The parties agree and acknowledge, however, that Corporation's approval authority is limited to the terms and conditions of Manager's standard contract form, and that Corporation shall not have the right to select or approve any specific concessionaire.

6.9 Corporation's Covenant Against Interference. Corporation covenants and agrees that neither it nor its Authorized Representative shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors, or other persons doing business or seeking to do business with the Facility nor shall the Corporation or its Authorized Representative solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities, or other benefits from Manager or any person doing business with the Facility.

ARTICLE 7

FEES AND EXPENSES

7.1 Annual Management Fees. For services to be performed by Manager, Corporation shall pay to Manager, commencing with the Effective Date of this Agreement, a base fee of \$100,000.00 per Fiscal Year, such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of each month throughout the remaining Term hereof. The fee shall be prorated for any partial month during such period.

7.2 Performance Compensation. In addition to the compensation payable to Manager under Section 7.1, following the first anniversary of the Operations Start Date, Corporation shall pay to Manager, annually in arrears, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the cost estimates for such Fiscal Year, provided, however, in no event shall the amount payable to Manager under this Section 7.2 exceed \$25,000 in any Fiscal Year. For example, in the event that the Fiscal Year Budget for the Facility showed a net loss of (\$675,000) and an actual loss (per the Audit referenced in Section 4.3) of (\$625,000) providing an improvement of \$50,000 for such Fiscal Year, then the performance compensation payable to SMG under this Section 7.2 would equal \$12,500 (i.e. 25% of such improvement). In table format, the above example would read as follows:

Fiscal Year Budget:	(\$675,000)
Actual NOL (Audited):	(\$625,000)
Improvement:	\$50,000

Performance Compensation (25% of Improvement) \$12,500

For purposes of this Section 7.2, Emergency Expenditures shall be excluded from the calculation of Operating Expenses. Performance compensation shall be negotiated for any renewal term.

ARTICLE 8

INSURANCE

8.1 Insurance to be Maintained by Manager. Throughout the term of this Agreement, Manager shall carry insurance in the types and amounts specified below. Manager agrees to furnish Corporation certified copies of all policies as evidence thereof:

a. All risk coverage including, but not limited to, flood, fire, wind, hail, theft, vandalism, and malicious mischief on the Facility and City-owned or Corporation-owned contents contained within the Facility. The coverage shall be at replacement cost with a 100% coinsurance clause and the Corporation shall be shown as a mortgagee, and the Corporation and City shall be loss payees on the policy.

b. Comprehensive Electronic Data Processing coverage for hardware, software, and related equipment located at the Facility, at replacement cost with a 100% coinsurance clause. The policy shall provide coverage for interruption of power and electrical disturbance.

c. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Worker's Compensation Act, as amended from time to time, and minimum policy limits for employers' liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee. The policies shall contain these endorsements in favor of the Corporation and City:

1. Waiver of Subrogation
2. 30 day Notice of Cancellation

d. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$10,000,000. Coverage shall include, at a minimum, Personal and Advertising Injury Liability coverage and Products and Completed Operations coverage with a separate aggregate limit of \$5,000,000. The policy shall contain the following provisions:

1. Blanket contractual liability coverage
2. Corporation and City indicated as additional insured
3. 30 day notice of cancellation in favor of the Corporation and the City
4. Waiver of transfer right of recovery against others in favor of the Corporation and of the City
5. Aggregate limits of insurance per location endorsement
6. Independent contractors' coverage

e. Security guard liability coverage with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. Personal injury coverages, including coverage for false arrest, shall be provided. The policy shall contain the following provisions:

1. Corporation and City named as additional insureds
2. 30 day notice of cancellation in favor of the Corporation and City

f. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of Corporation and City:

1. Waiver of Subrogation endorsement
2. 30 day notice of cancellation endorsement

g. Errors and Omissions coverage, not less than \$500,000 per claim, shall be in place for protection from claims arising out of the performance of professional services. Coverage shall be continuous for not less than 24 months following termination of the Agreement, including any renewals. Coverage, including any renewals, shall have a retroactive date coincident with or prior to the date of this Agreement.

h. Commercial Crime insurance is required for all losses emanating from the handling of Corporation or City checks or cash including but not limited to losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds. This policy shall be written for a minimum limit of \$1,000,000.

i. General Requirements.

Manager agrees not to commence work until it has obtained the required insurance as described in this Section 8.1, and until such insurance has been reviewed by Corporation and City. So long as Corporation provides adequate funding therefore, Manager shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or as required under this Agreement.

Insurance is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B + VII or better. Workers compensation coverage written by the Texas Workers Compensation Fund shall be acceptable. Professional liability and Security Guard liability coverage shall be written by companies acceptable to the Corporation and City.

All endorsements naming the City, such as additional insured, waiver, and notice of cancellation endorsement, as well as insurance certificates, shall indicate: City of Austin, Parks and Recreation Department, P.O. Box 1088, Austin, Texas 78767-8828 ATTN: Director of PARD. If this Agreement is assigned, these endorsement requirements shall apply to the assignee and Manager agrees to notify any assignee or proposed assignee of such requirements.

The "other" insurance clause shall not apply to the Corporation or City where Corporation or City, as applicable, is an additional insured shown on any policy. It is intended that policies required in the Agreement shall be considered primary coverage as applicable.

If insurance policies are not written for the amounts specified above, the Manager shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

Corporation shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, make any reasonable request for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either Corporation or Manager or the underwriter on any such policies.

Corporation and City reserve the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, to insurance coverage, limits, and exclusions when deemed necessary and prudent by Corporation and City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company.

8.2 . Indemnity.

a. Manager shall indemnify, defend, and hold harmless ("Indemnification") the Corporation and the City and their respective officers, agents, employees, directors, and shareholders ("the Indemnified Parties") of, from, and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs of court), including claims for personal injury ("Claim or Suit"), that any or all of the Indemnified Parties may hereafter suffer or incur in connection with, relate to or in any way, directly or indirectly, arising out of the non-performance by Manager or its representatives, agents, employees, or subcontractors, of its obligations under this Agreement.

b. The Corporation will not look to the Manager for Indemnification if the Manager has not caused the damage or injury that is the subject of a Claim or Suit.

8.3 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives, from any claims for damage to any person, the Facility, or any fixtures, personal property, improvements, and alterations of either party in or about the Facility that are caused by or result from risks insured against under any insurance policies required to be carried by the parties under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross of any party to this Agreement). The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

8.4 Survival. All obligations of the parties under this Article 8 shall survive the expiration or early termination of this Agreement.

ARTICLE 9

TERMINATION

9.1 Termination for Cause. Either party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 10.1, by the other party and the failure of the breaching party to cure the Material Breach in accordance with Section 10.1.

9.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debt as they mature, or the liquidation, dissolution or termination of the corporation or partnership existence of Manager or the failure of the City of Austin to appropriate funds sufficient to meet the budget for the succeeding year, subject to the provisions of Sections 4.7 and 4.8.

9.3 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to Corporation, returning all balances in the Operating Fund to Corporation, leaving equipment, supplies, manuals, books, records, and, inventories that are the property of Corporation or from funds made available by Corporation, and Corporation shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for Corporation during the term of this Agreement.

ARTICLE 10

DEFAULT AND REMEDIES

10.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

- a. Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after written notice has been given to the breaching party;
- b. Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after written notice has been given to the

breaching party, except that if the breach cannot reasonably be cured within thirty (30) days, a Material Breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach.

10.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to the lesser of 12% per annum or the maximum non-usurious rate of interest permitted by applicable law.

10.3 Notice of Breach. Each party shall promptly notify the other party in writing of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 10.1 and 10.2, a notice of a breach must state that it is a notice of breach and must specify the act or omission alleged to constitute a breach of this Agreement.

10.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

- a. The right to cure, at the breaching party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 10.2;
- b. The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 10.2;
- c. The right to sue to collect damages and attorneys fees suffered by the non-breaching party by reason of the occurrence of a Material Breach other than breach in the payment of money;
- d. The right to terminate this Agreement; or
- e. The right to injunctive relief including seeking specific performance of the breached obligation.

10.5 Inaction. Inaction on a breach of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

ARTICLE 11

MISCELLANEOUS

11.1 Notices. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice, or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with

receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when faxed, telegraphed, or telexed to a party, at such party's address set forth below or at such other address as a party may designate by notice given to the other in accordance with the foregoing.

To Corporation:

President, Austin-Rosewood Community Development Corporation
c/o Director, Parks and Recreation Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

With a copy to:

City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

To Manager:

President, SMG
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428

With a copy to:

Facility General Manager
Millennium Youth Entertainment Complex
1156 Hargrave St.
Austin, TX 78702

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. or any day which is not a business day, be deemed received on the next following business day.

11.2 Amendments. This Agreement may be amended only by the written consent of the parties.

11.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this

Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Schedules" are to be Articles and Sections of and Schedules to this Agreement.

11.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

11.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

11.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, successors, and assigns but this provision shall not be deemed to permit any assignment by a party of any of his rights or obligations under this Agreement except as expressly provided herein.

11.7 Assignment. Manager shall not voluntarily assign or encumber its interest in this Agreement without first obtaining Corporation's written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without Corporation's consent shall be void. Manager shall, however, have the right without Corporation's consent, to assign this Agreement as follows, provided the assignee has net worth comparable to Manager's net worth:

- a. to a general or limited partnership if
 1. Manager is a general partner and
 2. the partnership executes an agreement required by Corporation assuming Manager's obligation;
- b. to a corporation if
 1. Manager or its principals own the majority of the outstanding stock of the corporation entitled to vote on the election of directors and
 2. the corporation executes an agreement required by Corporation assuming Manager's obligations; or
- c. to a corporation with which Manager has merged or consolidated, to any principal of Manager or any parent or subsidiary of any such principal or of the Manager, or to a purchaser of all or substantially all of Manager's assets, if the assignee executes an agreement required by Corporation assuming Manager's obligations under this Agreement.

The provisions of this Section 11.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions, or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank, or other institutional lender providing credit to Manager or any of its Affiliates.

11.8 Further Action. Each party, within thirty (30) days after notice from the other party, shall execute and deliver to the party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, and the other party is not, to the best of the party's knowledge, in default under this Agreement or stating the exact nature of any default alleged to have occurred.

11.9 Entire Agreement. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreement and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

11.11 Applicable Law: Attorneys' Fees. This Agreement calls for performance and shall be performable in Travis County, Texas and shall be governed by, and construed and enforced in accordance with the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), and venue for any dispute arising hereunder shall be exclusively in the state courts of Travis County, Texas. The prevailing party in any litigation or other similar proceeding relating hereto, or for the enforcement of the provisions hereof, shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing party in such action.

11.12 Force Majeure. Neither party hereto shall be liable or responsible to the other party for delay, damage, loss, failure, or any inability to perform any of its respective obligations, covenants, and conditions cause by "Force Majeure" if notice is provided to the other party within ten (10) days of actual knowledge of the event of Force Majeure that such party is unable to perform. The term "Force Majeure" as used in this Agreement shall include the following: an act of God, strikes, lock-outs, war, riot explosions, industrial disturbances, acts or restraints of any government authority (civil or military), acts of the public enemy, laws, rules and regulations of Governmental Entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), civil commotion, blockades, insurrections, acts of terrorists or vandals, earthquakes, landslides, sinkholes, hurricanes, washouts, any material interruption of utilities at the Facility not willfully caused by a party hereto, a confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, epidemics, lightening, fire or other casualty, storm, floods, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome. In no event, however, shall the failure to pay any liquidated sum of money by either party be an event of Force Majeure.

11.13 Confidential/Proprietary Information. Manager understands and acknowledges that both Corporation and City are subject to the Texas public information and open meetings laws and regulations, and that the ability of Corporation and City to maintain the confidentiality

of any information or data received pursuant to this Agreement will be subject to such laws and regulations. City shall notify Manager promptly in writing upon receipt by the Corporation or City of an open records or other request for information provided by or relating to Manager or the Facility.

11.14 No Third Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, Corporation, and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third party beneficiary of this Agreement.

11.15 Gratuities and Kickbacks. It shall be a breach of Manager's obligations hereunder to offer, give, or agree to give any employee of Corporation or City or former employee of Corporation a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to or solicitation of any contract or proposal therefore by Manager from Corporation or City.

11.16 Limitation of Liability.

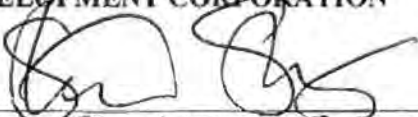
(a) Notwithstanding any contrary provision hereof, Corporation agrees that no partner, co-venturer, employer, agent, director, officer, shareholder, or Affiliate of Manager shall be personally liable to Corporation or anyone claiming by, through or under Corporation solely by reason of any default by Manager under this Agreement, any obligation of Manager to Corporation, or for any amount that may become due to Corporation by Manager under the terms of this Agreement or otherwise.

(b) Notwithstanding any contrary provision hereof, Manager agrees that no employee, official, agent, or director of the Corporation shall be personally liable to the Manager or anyone claiming by, through or under the Manager solely by reason of any default by the Corporation under this Agreement, any obligation of Corporation to Manager, or for any amount that may become due to Manager by Corporation under the terms of this Agreement or otherwise.

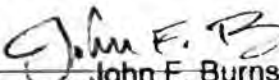
11.17 No Representation as to Operations Results. Corporation recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of the Manager. Manager has made no and disclaims any purported or actual representation or warranty as to the financial results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues or the accuracy of its projections and estimates thereof. Corporation recognizes and accepts that all Budgets and projections represent Manager's

estimate of the expected expenditures and revenues and that Manager is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected; this does not waive Manager's responsibilities to keep Corporation apprised monthly of fluctuations in expenditures and revenues and to plan accordingly in accordance with the terms and conditions of this Agreement.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Name: STUART STRONG
Title: Chair & President of ARCDC Board

SMG

By: 
Name: John F. Burns
Title: Chief Financial Officer

Facility Management Agreement
Exhibit A: Pre-Existing Agreement

FACILITY MANAGEMENT AGREEMENT

BY AND BETWEEN

LMI/HHI, LTD. d/b/a
LEISURE MANAGEMENT INTERNATIONAL

AND

AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION

FOR

CENTRAL CITY ENTERTAINMENT CENTER

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FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AGREEMENT ("Agreement") is made and entered into effective this 5th day of March, 1997 by and between LMI/HHI, LTD., d/b/a LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership ("Manager") and AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government non-profit corporation ("Corporation").

RECITALS

- a. The City of Austin ("City") owns a 4.978 acre tract of land in East Austin and has entered into a Financing Agreement with Corporation requiring Corporation to construct on such land the Central City Entertainment Center, a public family-oriented entertainment center for youth, which complex with all facilities, machinery, attachments and appurtenances now or hereafter attaching thereto, is hereafter referred to as the "Facility." Section 4.3 of the Financing Agreement, creating certain affirmative covenants from the Corporation to the City, is attached as Exhibit A and is hereby made a part of this Agreement.
- b. It is Corporation's intention that the Facility shall be operated in a professional manner with the objectives of providing a recreational environment for community youth, while attempting to maximize the utilization of and revenues produced by the Facility for the benefit of Corporation and attempting to minimize, to the extent reasonable and practicable, the net cost to Corporation.
- c. Corporation, after reviewing proposals received from private entities for pre-opening consulting and planning services and for post-opening Facility management services, selected Manager as the best qualified party to provide such services for the Facility.
- d. The Manager holds itself out as an organization whose principals have substantial experience and expertise in the management, operation and marketing of public assembly facilities.
- e. Corporation has determined to grant to the Manager, and the Manager has agreed to accept, the authority and responsibility to manage, operate and market the Facility in accordance with the terms of this Agreement.

ARTICLE I

DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

"Affiliate" of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

"Advertising" shall mean all announcements, acknowledgments, banners, signs, showbills, promotional materials, handouts and promotional product sampling give-aways, and other audio or visual commercial messages displayed, announced or otherwise presented in the Facility including, without limitation, video messages.

"Agreement" shall mean this Facility Management Agreement.

"Authorized Representative" shall mean the individual designated by each party pursuant to Section 2.4.

"Base Operating Expense Amount" shall mean the amount designated in each Budget as the "Base Operating Expense Amount" for the Fiscal Year in question.

"Base Operating Revenue Amount" shall mean the amount designated in the Budget as the "Base Operating Revenue Amount" for the Fiscal Year in question.

"Budget" shall mean any budget to be prepared by Manager and approved by Corporation under the provisions of Article 4.

"Capital Expenditures" shall mean all expenditures in excess of One Thousand Dollars (\$1,000) for building additions, alterations or improvements, and for purchases of additional or replacement furniture, machinery or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.

"Commencement Date" shall mean the date first written above.

"Corporation" shall mean the Austin-Rosewood Community Development Corporation.

"Depository" shall mean the financial institution in which Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.

"Emergency Expenditure" shall mean (i) any Operating Expense to the extent not included within a Budget and not expected by Manager to be incurred but which Manager believes in good faith to be a necessary Operating Expense required to protect the public safety, or (ii) any expense to fund capital improvements, replacements or repairs necessary to correct any condition that jeopardizes the structural soundness of the Facility, the public safety, the imminent threat of damage to the property, or to prevent a violation of law.

"Event(s)" shall mean all activities and events which are conducted at the Facility and scheduled by Manager.

"Facility" shall mean the Central City Entertainment Center, including all of the parking areas and garages appurtenant thereto.

"Fiscal Year" shall mean a twelve month period of time beginning on October 1 and ending on the immediately following September 30.

"General Manager" shall mean the chief financial officer of Manager at the Facility.

"Governmental Entities" shall mean the federal government, the State of Texas, the City of Austin, or any county, municipality (or any entity created by a municipality), governmental or quasi-governmental entities having jurisdiction or other authority over the Facility.

"Management Fees" shall mean those fees payable to Manager under Section 7.1, 7.2, or 7.3.

"Manager" shall mean LMI/HHI, LTD., doing business as Leisure Management International.

"Material Breach" shall have the meaning provided in Section 10.1.

"Material Contract" shall be those contracts which (i) would require Corporation approval; (ii) permit a similar user or promoter to utilize the Facility for more than twenty-five (25) event days in any Fiscal Year; or (iii) have a term in excess of three (3) years (including renewal options exercisable by any party) and which may not be cancelled by Manager or Corporation without penalty or premium.

"Operating Expenses" shall mean and include all expenditures by Manager in any specified period during the Term of this Agreement, within the authority or responsibility of the Manager under this Agreement, including, but not limited to, all payments made to obtain Operating Revenues; salaries, wages and benefits of personnel working at the Facility; contract labor; maintenance and repairs; utilities; telephone; telescreen and/or scoreboard operations;

dues, memberships and subscriptions; security; audit fees; legal fees directly related to the performance of this Agreement; other professional fees; fees paid to concessionaires or other subcontractors; refuse removal; cleaning; sales taxes; building supplies; ticket commissions; premiums for insurance maintained under Section 3.1; data processing; Advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Facility related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA and other credit and debit facilities and telecheck fees and expenses; travel, lodging and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; all damages, losses or expenses paid by Manager or its Authorized Representative as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys fees incurred in litigation against Manager or its Authorized Representative under this Agreement; but excluding any Capital Expenditures, amortization, depreciation and other non-cash charges and any losses, damages, or expenses suffered by Manager or its Authorized Representative as a result of (1) any uninsured negligent act or omission of Manager or its Authorized Representative; (2) any transaction from which Manager or its Authorized Representative derives an improper personal benefit; or (3) any willful Material Breach on the part of Manager.

"Operating Fund" shall mean a fund maintained by Manager under Section 5.1.

"Operating Loss" shall mean the amount by which Operating Expenses for any specified fiscal period exceed the Operating Revenues for such fiscal period.

"Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager (1) for the use of, operation, or admission to, the Facility or any portion thereof; (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licensees; (3) from interest on or proceeds of investment of any accounts required to be maintained under Article 5; (4) for rental or use of the Facility equipment; or (5) as fees for services rendered at the Facility, including parking; but excluding, in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facility and any sums received as disbursements from the Working Capital Fund.

"Operations Start Date" shall mean the later of (a) the date of issuance of a final and unconditional certificate of occupancy or other similar governmental permit or license for the entire Facility or (b) if requested by Corporation, the date of issuance of any temporary certificate of occupancy or similar governmental permit or license permitting an Event to be conducted at the Facility; or (c) the date the Facility actually opens to the public.

"Term" shall mean the time period described in Section 2.3.

"Working Capital Fund" shall mean the fund required to be maintained under Section 5.2.

ARTICLE 2

INTRODUCTION

2.1 Grant of Authority. Corporation hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of Corporation, to provide those management services to Corporation as are set forth in this Agreement in connection with Manager's management, operation and administration of the Facility and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such management services all upon the terms and subject to the limitations of this Agreement. Manager and Corporation acknowledge and agree that Manager shall retain control of the Facility as the manager and operator thereof pursuant to this Agreement, but that Manager may delegate certain specific and limited responsibilities related to the management and operation of the Facility to third parties, but shall retain the exclusive authority and responsibility with respect to the management and operation of the Facility.

2.2 Nature of Relationship. The parties agree that the only relationship created by this Agreement is that between Corporation, as owner, and Manager, as an independent contractor, for certain management and operating services assigned to Manager by Corporation and that Manager is an independent contractor, not an agent, employee, joint venturer or partner of Corporation.

2.3 Term.

a. The initial term of this Agreement (the "Initial Term") shall commence as of the Commencement Date and shall expire for any and all purposes, unless terminated earlier under the terms of this Agreement, at twelve o'clock midnight on the fifth anniversary of the Operations Start Date. Notwithstanding the fact that the Initial Term is provided to commence at a date subsequent to the execution of this Agreement, both Manager and Corporation intend that each shall have vested rights immediately upon the execution of this Agreement and that this Agreement shall be fully binding and in full force and effect from and after the execution hereof by Manager and Corporation.

b. Prior to one hundred and eighty (180) days before expiration of the Initial Term of this Agreement and any extensions, either party may call for renegotiation to extend this Agreement for an additional term of five (5) years. If the parties cannot, through good faith negotiations, reach agreement on the terms and conditions of an extension prior to one hundred and twenty (120) days before expiration, this Agreement shall automatically terminate at the end of the then-current term. In no case may this

Agreement be extended for more than three (3) five (5) year extensions, without City Council approval.

2.4 Contract Administration. Corporation hereby appoints Jesus Olivares and Manager hereby appoints Justin White as their respective Authorized Representatives, each of whom shall act as liaison and contact person between the parties in matters concerning the administration of this Agreement. Each party shall have the right to designate a substitute Authorized Representative by providing written notice to the other party. Except for budget matters, if either party desires to do any act hereunder which requires the other party's approval, such request shall be submitted in writing to the other party's Authorized Representative. The Authorized Representative shall respond to such request within fifteen (15) days after submittal, failing which the request shall be deemed approved. Manager understands and acknowledges that only the Corporation's Authorized Representative shall be authorized to make and/or communicate decisions of the Corporation regarding implementation of this Agreement, and Manager agrees to look exclusively to the Corporation for such input or information as Manager believes is necessary to carry out its duties under this Agreement.

2.5 Authority Regarding Closure of Facility. The parties agree that, in the event Corporation determines that continued operation of the Facility or any portion of the Facility is not feasible, Corporation shall have the authority to close the Facility or portion, and Manager agrees to cooperate with Corporation in performing all acts necessary to accomplish such closure. If a portion of the Facility is closed as a result of the Corporation's closure pursuant to the immediately preceding sentence and not as a result of either Force Majeure or a temporary closing of the part of the Facility resulting from seasonal booking of certain Events precluding the booking of other Events, the parties agree that Manager's Management Fee, as described in Section 7.1, shall not be adjusted unless at least one-third of the Facility's public space is closed for more than ninety (90) consecutive days, in which case Manager and Corporation agree to negotiate an equitable adjustment to the Management Fee for the remainder of the time period that such space is not open to the public. If the entire Facility is closed, Corporation shall pay Manager not later than ten (10) calendar days following such closure the aggregate of (i) all Management Fees owed to Manager as of the date of closure; (ii) all expenses, if any, incurred by Manager and not reimbursed as of such date, to the extent otherwise reimbursable under this Agreement; and (iii) a termination fee of seventy-five thousand dollars (\$75,000.00).

ARTICLE 3

RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the funding limitations set forth in this Agreement, Manager shall exercise its diligent, good faith efforts in managing and operating the Facility so as to minimize Operating Expenses and maximize Operating Revenues. In this connection, the parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facility, but also those events

that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, or other benefit to Corporation or otherwise serve the public interest; provided that no use of the Facility shall be permitted without a reasonable charge for such use.

3.2 Duty and Liability. Manager shall owe to Corporation a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and Corporation and consistent with the terms of this Agreement. Manager shall not be liable, responsible, or accountable in damages or otherwise to Corporation for any act or omission that is within the scope of its authority under this Agreement, except for (i) acts or omissions constituting negligence which are not covered by insurance; (ii) acts or omissions of Manager not in good faith or involving gross negligence; intentional misconduct, or knowing (i.e., conscious awareness) violation of law, (iii) any transaction from which Manager derives an improper personal benefit or (iv) any willful Material Breach on the part of Manager.

3.3 Pre-Opening Duties and Responsibilities. Subject to the limitations set forth in this Agreement Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) on or for the period prior to the Operations Start Date:

- a. Work with Corporation to establish goals, objectives, strategies, areas of responsibility, and lines of communication;
- b. Provide Corporation with detailed written recommendations for the best use of the Facility, including, but not limited to, recommendations regarding design and selection of appropriate uses, no later than thirty (30) days following the execution of this Agreement;
- c. Locate and staff an office for all activities of Manager prior to the Operations Start Date;
- d. Attend regular meetings with Corporation and Central City Entertainment Advisory Committee as often as reasonably necessary to facilitate communications and coordination of activities relating to the Facility;
- e. Review recommendations for marketing plans, MBE/WBE utilization plan, facility design and selection of uses with Central City Entertainment Advisory Committee;
- f. Recommend revisions to the preliminary space program for the Facility to take into account user requirements, operating requirements and local community requirements;
- g. Plan and coordinate public relations activities for the Facility;

h. Make Manager reasonably available for press conferences and other public appearances;

i. Assist in the identification and selection of the various design professionals for the Facility and review with the design professionals the plans submitted by consultants for mechanical, electrical, acoustical, graphics, concession services, landscaping and facility matters for conformity with the operation requirements of the Facility and advise and prepare specifications for furniture, fixtures and equipment for the Facility;

j. Plan, coordinate and participate in major meetings of the design professionals for the Facility as may be requested by Corporation;

k. During presentation of working drawings and other documentation by the design professionals for submission for construction bids and contract awards, work with the Corporation and the design professionals in the (a) review of the documents comprising the working drawing package for design objectives and potential cost savings, as well as performance specifications and warranty performance criteria and (b) review and recommend changes where appropriate, to make the Facility more useful, efficient or functional for its intended purposes;

l. Advise Corporation with respect to the identification, selection of general contractors, contractors and/or subcontractors and in the preparation of bid packages and negotiation and execution of definitive agreements with such parties in connection with the construction of the Facility;

m. Ensure that the concessionaires and vendors at the Facility have obtained necessary permits, bonds and insurance required by the terms of their engagement;

n. Advise Corporation with respect to the review of applications for payment and supporting documentation prepared by general contractors, contractors, and/or subcontractors and others performing work or furnishing materials for the construction of the Facility and assist Corporation in the negotiation of final payments and/or final settlements with all parties involved in the construction of the Facility;

o. Advise Corporation with respect to the enforcement of any agreements with any architects, general contractors, contractors, subcontractors and/or design professionals providing services at the Facility;

p. Establish lines of authority and communications among Manager, Corporation and the design professionals, and all other persons responsible for implementing the development of the Facility and, within two (2) weeks following execution of this Agreement, begin working closely with the Facility design team selected

by Corporation and assist Corporation in evaluating design and construction documents as they accommodate recommended venues;

q. Review preliminary and final designs of the mechanical, plumbing and electrical systems for operational cost effectiveness, energy conservation and general efficiency and evaluate space usage, core plans and efficiency factors;

r. Consult with Corporation regarding the implementation of schedules for the completion of the construction of the Facility;

s. Coordinate the construction and turnover of the Facility for the use, occupancy and operation thereof and assist in the facilitation of the transition from construction to actual use, occupancy and operation of the Facility;

t. Solicit, prepare, negotiate and execute multi-year use agreements with professional sports organizations, family oriented event producers or promoters and other specialty sports and entertainment events and other events requiring significant advance booking;

u. Solicit, prepare, negotiate and execute joint venture or production agreements with international, national and local event producers in order to maximize the utilization of the Facility;

v. Coordinate, solicit and prepare bid packages for presentations for specialty events, exhibitions, collegiate tournaments and other events to be held at the Facility;

w. Recommend and supervise the implementation of a project reporting system with respect to marketing, design, construction, finance and operational requirements;

x. Disseminate to Corporation monthly written reports concerning Manager's pre-opening marketing and operational efforts, such reports to be in the form attached hereto as Schedule 1;

y. Direct and supervise the procurement of all furniture, fixtures and equipment for the Facility subject to the applicable limitations of the Budget;

z. Develop and deliver to Corporation, within one hundred and eighty (180) days of the execution of this Agreement, a preliminary revenue and expense pro-forma projection for the first year of operation of the Facility;

aa. Assist Corporation in determining the Facility's parking requirements;

ab. Prepare, no later than one hundred and eighty (180) days prior to the Operations Start Date, a comprehensive pre-opening marketing plan, to include a pre-opening sales, advertising and community relations, and media plan, subject to approval of the Corporation, and implement the approved plan in a manner that will maximize Facility use of and revenue during the early operational years;

ac. Develop and implement a comprehensive staffing plan, including job descriptions, and identify, select and train the Facility's full-time and part-time staff;

ad. Develop and deliver to Corporation no later than March 31, 1997 written recommendations for the organizational structure and operating policy best suited for the Corporation's continued control over and growth of the Facility.

ae. Identify prospective food, beverage, souvenir, novelty and program concessionaires for the Facility, negotiate and (with the approval of the respective professional sports organizations) execute contracts with those concessionaires;

af. Identify, negotiate and execute contracts with security and all other service contractors providing services to the Facility;

ag. Prepare and provide to Corporation, if necessary, no later than May 1, 1998, a comprehensive revised Operating Budget for the facility;

ah. Prepare, recommend and implement approved operating policies and procedures, and rules and regulations for the Facility;

ai. Establish rental rate schedules for the use of the Facility;

aj. Plan and coordinate, in conjunction with the Central City Entertainment Center Advisory Committee, the dedication opening ceremonies for the Facility;

ak. Design and implement a financial accounting system for the Facility, such system to be mutually agreed upon by the parties;

al. Select, employ and supervise such personnel as shall be necessary for the operation of the Facility prior to the Operations Start Date;

am. Plan and coordinate the sale or licensing of Advertising, parking and any other source of Operating Revenues desirable for the Facility, and in connection therewith, make distributions from the Operating Fund as contemplated herein;

an. Perform such other consulting, administrative or management services as reasonably requested by Corporation;

ao. Prepare, recommend and use reasonable efforts to implement a program for the hiring and training of minorities and women for employment at the Facility as well as the involvement of minority and women owned business enterprises to best reflect the minority make-up of the immediately-surrounding communities;

ap. Prepare, recommend and, subject to the availability of funds, use reasonable efforts to implement a program designed to comply with the requirements of the Americans with Disabilities Act ("ADA") as they apply to the operational aspects of the operation of the Facility but not the Facility itself; any physical accessibility requirements of the ADA with respect to the Facility shall remain the responsibility of the Corporation;

aq. Attend regular meetings with Corporation for which Manager shall provide a summary of the operation of the Facility for the previous quarter and prospects for future operations, and at which any other business regarding the Facility may be discussed;

ar. Provide to Corporation monthly reports of all activities of Manager prior to the Operations Start Date.

3.4 Post-Opening Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement, Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) throughout the Term hereof after the Operations Start Date:

a. Manage and operate the Facility and any facilities ancillary thereto and contract for its use in a manner that will promote and further the purposes for which the Facility is to be constructed, as set forth in the Recitals to this Agreement;

b. Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) with persons who desire to schedule events, performances, telecasts, broadcasts or other transmissions in, from or to the Facility or who desire otherwise to use the Facility or any part thereof or (b) that otherwise pertain to the use, operation and occupancy of the Facility or any part thereof;

c. Coordinate (and participate in where necessary or applicable) all Advertising, licensing, promotional activities, marketing, and public relations for or at the Facility;

d. Negotiate, execute, and perform all contracts, use agreements, licenses and other agreements (a) for the use of Advertising space in or about the Facility and all Advertising rights of whatever kind or nature related to the Facility or (b) for the sale, promotion, marketing and use of all names, trademarks, trade names, logos and similar intangible property relating to the Facility;

c. Operate at and for the Facility, through concessionaires selected by Manager, the sale of food, beverages, souvenirs, novelties and programs;

f. Select, schedule, and coordinate the efforts of all parties involved in the operation of the Facility and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4;

g. Plan, coordinate, and administer operation of the Facility and continue to identify, select, and train the Facility's staff;

h. Subject to the Budget, retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with Corporation's legal department where necessary or appropriate;

i. Coordinate the work of all parties performing work in connection with the operation of the Facility;

j. Monitor actual and projected Operating Expenses; and advise Corporation of any projected or actual variances from the approved Budget(s) in monthly reports;

k. Make prompt payment of the Operating Expenses from funds available for that purpose under Article 5;

l. Furnish all services necessary to accomplish the foregoing requirements of this Section 3.4;

m. Perform such other consulting, administrative or management services as reasonably requested by Corporation;

n. Devise and implement procedures (including preventive maintenance procedures) reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition; and

o. Market the sale of seats within the arena portion of the Facility.

p. Prepare monthly and year-to-date management reports regarding the Facility operations by segment and by concession to assist Corporation in planning, budgeting, cost control, performance evaluation and revenue enhancement. These reports shall include, but will not be limited to, the following:

1. Patron attendance by use;

2. Monthly and year-to-date reports of revenues and expenses as compared to Budget;
3. Analyses of food and beverage concession and catering performance and income for the current period, year-to-date, and prior periods;
4. Analyses of other concession/contractor performance and income;
5. Analyses of event attendance and revenues on a per capita, average and total basis; and
6. Other statistical reports requested by Corporation.

q. Implement and monitor comprehensive risk management and energy efficiency programs for the Facility;

r. Use reasonable efforts to comply with the Facility's MBE/WBE utilization plan as approved by Corporation. Such plan shall be prepared jointly by Corporation and Manager;

s. Maintain, for review by the Corporation upon reasonable notice, information as reasonably required by Corporation to satisfy Corporation's responsibilities, including information regarding injuries and unusual incidents at the Facility, and regarding security measures and safety programs (including recommendations for changes of such measures/programs) at the Facility.

3.5 Compliance with the Law; Duty. Manager shall comply with all applicable laws, rules, regulations, ordinances relating to the use and operation of the Facility. Manager shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public entertainment facility would operate. Subject to the foregoing, Manager shall promptly and fully discharge all of its obligations under this Agreement. Failure of Corporation to approve Manager's funding recommendations for such compliance shall relieve Manager of all liability arising from such lack of funding.

3.6 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, Corporation recognizes and agrees that performance by Manager of its responsibilities under Article 3 and otherwise under this Agreement is in all respects subject to and conditioned upon provision of funds to Manager for such purposes as hereinafter provided, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Budgets approved by Corporation from time to time. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager to request additional funds from the Corporation, except for Emergency Expenditures for which there are adequate funds on hand,

and any such request shall be made in writing at least thirty (30) days before such funds are needed. The requirement for a written request for funds shall not apply in the event of a need for an Emergency Expenditure if there is additional funding available in the Operating Fund to cover such Emergency Expenditure. Manager accepts the limitations of the Budget and agrees that Corporation has no responsibility or duty to provide funds in excess of the approved Budget, as such Budget may be amended from time to time. If additional funds are necessary Corporation agrees to request from the City Council of the City of Austin such additional funds.

3.7 **Bond.** Prior to or simultaneous with the execution of this Agreement, Manager shall deliver to Corporation a "Blanket Position Fidelity Bond" in the amount of Twenty Thousand Dollars (\$20,000) for each Manager employee who handles the Facility monies on behalf of Manager and the Corporation. In the event of a fraudulent act, dishonest act or embezzlement by an Manager employee, Corporation may make demand upon and receive payment under such bond.

3.8 **No Construction or Design Responsibilities.** Notwithstanding Manager's review of and recommendations with respect to the design, plans, and specifications for the Facility, Manager will not have responsibility to Corporation or any other person for or authority concerning the same and will not supervise or be responsible in any manner for construction related to the Facility. The parties acknowledge and agree that Manager shall not be responsible for the selection of architects, contractors, subcontractors or suppliers; the prosecution of the work; the compliance of the work with the plans and specifications for the Facility or applicable law, rules, regulations, or codes; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement or renovation of the Facility notwithstanding the obligations of Manager hereunder. Corporation acknowledges that Manager's recommendations, if any, are based solely upon Manager's practical experiences in the operation of public assembly facilities similar to the Facility. Corporation acknowledges and agrees to look to the contractor, subcontractors, architects, engineers and other design professionals for all matters related to the design and construction of any such construction work and not to Manager.

ARTICLE 4

RECORDS, ACCOUNTS AND REPORTS

4.1 **Books/Records.** The Manager shall maintain, with respect to its management and operation of the Facility, complete, separate and accurate books of account and records of its activities and finances, as reasonably required by Corporation or as required by applicable federal or state law. Such books of account and records shall be prepared and maintained in accordance with generally accepted accounting principles and industry standards.

4.2 Access to Facility Premises/Facility Information. Authorized representatives of Corporation and City shall be issued an identification credential authorizing their access to the Facility. Upon reasonable prior notice to Manager and presentation of such identification credential, authorized representatives shall have the unqualified right to: (a) enter upon Facility property and inspect the property and improvements, and (b) examine, copy and make extracts of books, records, accounting and financial data and any other documents or records concerning the management and operation of the Facility. The Corporation and City shall each provide Manager with an up-to-date list of authorized, credentialed representatives.

4.3 Annual Audit Report. Not later than December 31 of each Fiscal Year during the term of this Agreement, the Manager shall furnish to Corporation an annual audit report for the previous Fiscal Year, which shall include a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accounting firm preparing the report, which shall be a firm of national reputation selected jointly by the Manager and Corporation. In addition, the Manager shall furnish to the Corporation an annual report on agreed-upon procedures for the Manager's system of revenue accounting, for which report the Corporation shall determine the agreed-upon procedures. The engagement letter from the independent firm of certified public accountants shall contain a statement that the Corporation shall receive a copy of all audit work papers produced either by the Manager or the accounting firm during the annual audit of the financial statements. The notes to the audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. The Manager shall deliver to the Corporation, at the same time it delivers the annual audit report, a copy of all of the audit work papers that underlie the audited annual financial statements.

4.4 Financial Reports. Within twenty-five (25) calendar days of the end of each calendar month, the Manager shall furnish to Corporation a report regarding the Facility's financial performance during the prior month, including all Operating Expenditures and Operating Revenues.

4.5 Capital Expenditure Budget. Not later than May 1 of each Fiscal Year during the term of this Agreement, the Manager shall submit a proposed budget for projected Capital Expenditures for the following Fiscal Year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for Corporation. In addition, if the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety or the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action. Failure of Corporation to approve Manager's recommendations for such remedial action shall relieve Manager of all liability arising from such lack of remedial action.

4.6 Annual Operating Budget. Not later than May 1 of each Fiscal Year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a

proposed annual operating budget for the following Fiscal Year, listing all projected Operating Revenues and Operating Expenses by category and by calendar month. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of operating budgets for the Corporation.

4.7 Budget Approval. Corporation shall promptly review all proposed budgets and amendments thereto and communicate to the Manager any comments or suggested revisions thereto. The parties agree to negotiate all budget matters in good faith and to meet at least every two weeks following submission of the proposed budget, or more often as may be necessary, to resolve any outstanding budget issues. If, however, the parties are unable to reach a final agreement in writing by August 1 of any Fiscal Year, notwithstanding the parties' good faith efforts, the Budget for the following Fiscal Year shall be identical to the Budget then in effect.

4.8 Funding Contingency. Notwithstanding the provisions of Section 4.7 hereof, in the event of the non-appropriation of funds by the City of Austin to the Corporation in an amount sufficient to enable the Corporation to make all required payments to Manager under this Agreement, Manager shall have the right to either accept such reduced or insufficient funding or, at Manager's election, to terminate this Agreement by written notice to the Corporation given within sixty (60) days following Manager's receipt of notice of such non-appropriated funding. In the event that all appropriations or funds are restored and fully funded by the City of Austin to the Corporation for the operation and maintenance of the Facility after this Agreement has been terminated pursuant to this Section 4.8, Corporation shall provide written notice thereof to Manager whereupon Manager shall have the first right to enter into a new agreement with Corporation on the same terms and conditions set forth herein. In the event Manager elects to exercise such right and option, Manager and Corporation shall promptly thereafter execute and enter into an amendment to this Agreement reinstating the same to its original terms and conditions. Subject to the appropriation of funds by the City, Corporation shall pay to Manager the Management Fees and all expenses and any other sums due and payable to Manager hereunder through and including the date of termination.

ARTICLE 5

FUNDS AND ACCOUNTS

5.1 Operating Revenue Account. After the Operations Start Date, Manager shall collect all Operating Revenues and deposit them in a separate, interest-bearing account maintained by Manager in its name in the Depository (the "Operating Fund"). Manager shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article 5. Monies in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there

shall be a balance in the Operating Fund in an amount in excess of the anticipated working capital and Operating Expenses for the first month of the ensuing year, Manager shall disburse such excess to Corporation on or before the fifteenth (15) day of such month, subject to the provisions of Article 7 below.

5.2 Working Capital Fund. After the Operations Start Date, in order to provide the working capital necessary to permit Manager to perform its obligations hereunder with respect to Operating Expenses and Capital Expenditures not funded by the Operating Fund, Corporation shall advance to Manager for deposit in an interest-bearing account in the Depository to be held and administered by Manager in Manager's name ("Working Capital Fund"), a minimum amount equal to twenty-five percent (25%) of the projected Operating Expenses for the Budget year then in effect, as provided below:

a. Working Capital Fund. By no later than the first day of each Fiscal Year, Corporation shall advance to Manager such amount as is necessary to replenish the Working Capital Fund to a minimum amount equal to twenty-five percent (25%) of the projected Operating Expenses for the approved Budget then in effect; provided, however, that in no event shall the aggregate of all contributions made in accordance with this Article 5 in any Fiscal Year exceed the amount of Operating Expenses set forth in the Budget.

b. Application to Unfunded Operating Loss. If after the first day of any month the amount of monies on deposit in the Operating Fund and available for that purpose shall be insufficient for the payment of Operating Expenses then due or budgeted to become due during such month, Manager may advance the amount of such insufficiency from the Working Capital Fund to the Operating Fund. Manager shall immediately notify Corporation of any such advance and, subject to the limitations in Section 5.2a., Corporation shall promptly, but in no event later than the tenth (10th) day following the giving of such notice, restore to Manager for deposit in the Working Capital Fund the amount of such advance.

c. Application to Emergency Needs. If at anytime or from time to time, by reason of any occurrence of an Emergency Expenditure, a shortfall occurs in monies on deposit in the Operating Fund (together with funds made available therefor by Corporation under Section 4.6) for payment of Operating Expenses then due, Manager may advance from the Working Capital Fund to the Operating Fund the amount of such insufficiency. Manager shall immediately notify Corporation of such advance, and to the extent funds are available in the Budget, Corporation shall promptly, but in no event later than the tenth (10th) day following the giving of such notice, restore to Manager for deposit in the Working Capital Fund the amount of such advance.

5.3 No Obligation of Manager to Advance Funds. Corporation is solely responsible for and shall promptly pay, or provide funds to Manager to enable Manager to pay, all Operating Expenses, Emergency Expenditures, and Capital Expenditures and Manager shall not

be obligated to make any advance of its own funds to or for the account of Corporation or to pay any sums incurred for the performance of services or goods delivered to the Facility, nor shall Manager be obligated to incur any liability or obligation for the account of Corporation.

ARTICLE 6

POWER AND FUNCTIONS

6.1 Authority of Manager. Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers and duties conferred or imposed on Manager in this Agreement. The powers of Manager with respect to the Facility shall be plenary, subject only to the limitations expressly set forth in this Agreement.

6.2 Property. The Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by Corporation and/or the City. Upon notice from Manager to Corporation of the need to move off-site any movable property that Manager has determined is surplus or unnecessary at the Facility, Corporation will remove such property within three (3) days. Corporation shall be obligated to provide Manager with an accurate initial inventory of all property and non-consumable items located at the Facility owned by the Corporation and Manager shall be obligated to provide Corporation with an accurate annual inventory of all property and non-consumable items located at the Facility.

6.3 Capital Improvements. Except for the Capital Expenditures set forth in the Budget and Emergency Expenditures, Manager shall have no authority to make any material alterations or any capital improvements to the Facility without the prior written consent of Corporation.

6.4 Contracts. The Manager shall have no authority, without the prior written consent of Corporation, to enter into: (a) any contract for more than Thirty Eight Thousand and No/100 Dollars (\$38,000) or (b) any contract for the provision of goods and/or services to the Facility at any time beyond the expiration date of the initial term of this Agreement provided, however, that Corporation agrees to cooperate with Manager in connection with the execution of such contracts that would extend beyond the term of this Agreement by executing and delivering agreements with the providers of such goods and services whereby Corporation agrees to honor and observe such contracts following termination of this Agreement. Manager shall have the right to enter into, execute, and deliver contracts with users of the Facility which extend beyond or relate to dates falling after the expiration of the term of this Agreement. All contracts entered into by Manager shall provide that the same are assignable to Corporation without the vendor's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that Corporation shall have the right to and the Corporation shall assume in writing any or all then outstanding contracts affecting the Facility.

6.5 Employees.

a. Employees now or hereafter hired by Manager in connection with the management services provided by Manager shall be employees of Manager and not of Corporation, although the employment costs of such employees (wages, salary, benefits) shall be part of the Operating Expenses. Such employment costs shall be consistent with industry standards in the field of private facility management, at each level of employment. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation and other terms and conditions relating to its employees, subject only to the provisions of Section 4.6 of this Agreement.

b. Manager, following consultation with the Corporation, shall select the General Manager who will be placed on site at the Facility. The General Manager shall be and remain an employee of Manager. The General Manager's salary and all other employment costs, including, travel to and from Houston for meetings, car allowance and other benefits and related employment costs, shall be part of the Budget and Corporation shall reimburse Manager therefore. In the event that Corporation has concerns related to the General Manager, Corporation and Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, Manager shall propose to Corporation a plan to address such concerns. If such plan is not satisfactory to the Corporation, the parties shall continue meeting until a mutually agreeable plan is reached.

c. Corporation covenants and agrees that neither it nor its Authorized Representative shall during the term hereof or for a period of twelve (12) months following the expiration or early termination of this Agreement hire, employ, solicit for hire, or engage in any manner or for any purpose any person who has served as General Manager during the Term of this Agreement, or any other of Manager's "senior personnel." "Senior personnel" shall mean and refer to the three (3) individuals involved in management who are designated by Manager in a written notice to the Corporation as "senior personnel" for purposes of this Agreement.

6.6 Purchase of Supplies and Services. Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies and inventories reasonably required by it in the management of the Facility but shall endeavor to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager. Manager may not, without the prior written consent of the Corporation, acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement.

Manager has advised Corporation that Manager performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Facility, Manager may from time to time book the same event at a number of the facilities it operates. If Manager desires to book events at the Facility while at the same time booking said events under the same contract (or one or more contracts executed concurrently) for other facilities for which Manager is providing services, then before finalizing such contract, Manager shall obtain Corporation's approval over the allocation of such contracts' expenses to the Facility. Similarly, if authorized to acquire business services for the Facility, Manager desires to acquire goods or services in bulk for the Facility and one or more of the other facilities for which Manager performs services, Manager shall first obtain Corporation's approval over the allocation of the costs thereof to Facility. Provided, however, Manager shall not allocate or impose any costs or expenses related to its corporate offices or other facilities to the Facility which are not related to Manager's provisions of management services to the Facility. Provided, Corporation's approval under this Section 6.6 shall not be unreasonably withheld or delayed.

6.7 Settlement of Claims. Manager has been advised by Corporation (and Corporation shall continually keep Manager apprised of) Corporation's procedures and requirements in respect of settlement of third party claims filed against Corporation or with respect to the Facility. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by Corporation so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of civil or criminal penalty against Manager. Manager and Corporation agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, all costs and expenses thereof, including the settlement thereof, to be deemed an Operating Expense if the Corporation agrees to such settlement (unless covered by insurance, in which case the Corporation shall be deemed to consent) in accordance with the terms and provisions of this Agreement.

6.8 Concession and Service Contracts. Manager shall obtain the Corporation's prior approval of the standard contract form, and of any material variations thereto, to be entered into by and between Manager and third parties for the provision of the food and beverage concession or services for the Facility. The parties agree and acknowledge, however, that Corporation's approval authority is limited to the terms and conditions of Manager's standard contract form, and that Corporation shall not have the right to select or approve any specific concessionaire.

6.9 Corporation's Covenant Against Interference. Corporation covenants and agrees that neither it nor its Authorized Representative shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors or other persons doing business or seeking to do business with the Facility nor shall the Corporation or its Authorized Representative solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities or other benefits from Manager or any person doing business with the Facility.

ARTICLE 7

FEES AND EXPENSES

7.1 Pre-Opening Management Fees. During the design, construction and development of the Facility, Corporation shall pay to Manager a management fee of \$6,500 per month for each month during the Term prior to the Operations Start Date. In addition, Corporation shall reimburse Manager for any consulting fees and costs incurred by Manager, provided that such fees and/or costs do not exceed the amounts approved in the pre-opening Facility budget attached hereto as Exhibit "B", and provided that the Corporation's obligations to pay the additional fees referred to in this sentence shall terminate at the Operations Start Date. The management fees described in this Section 7.1 shall be payable on or before the first day of each month commencing with the Commencement Date. All consulting fees and costs incurred by Manager and payable under this section 7.1 shall be payable within thirty (30) days following receipt by Corporation of an invoice, along with supporting documentation and invoices for all such consulting fees and costs. The management fee shall be prorated for any partial month during such period.

7.2 Annual Management Fees. For services to be performed by Manager, Corporation shall pay to Manager, commencing with the Operations Start Date, a base fee of \$100,000.00 per year, such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of each month throughout the remaining Term hereof. The fee shall be prorated for any partial month during such period.

7.3 Performance Compensation.

a. In addition to the compensation payable to Manager under Sections 7.1 and 7.2 hereof, for the first year following the Operations Start Date, Corporation shall pay to Manager, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the loss or profit above the Budget estimates for such Fiscal Year (attached hereto as Exhibit C), provided, however, in no event shall the amount payable to Manager under this Section 7.3(a) exceed \$25,000. For purposes of this Section 7.3(a), Emergency Expenditures shall be excluded from the calculation of Operating Expenses.

b. In addition to the compensation payable to Manager under Sections 7.1 and 7.2 hereof, following the first anniversary of the Operations Start Date, Corporation shall pay to Manager, annually in arrears, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the loss or profit above the Budgeted estimates for such Fiscal Year, provided, however, in no event shall the amount payable to Manager under this Section 7.3 exceed \$25,000 in any Fiscal Year. For purposes of this

Section 7.3, Emergency Expenditures shall be excluded from the calculation of Operating Expenses. Performance compensation shall be negotiated for any renewal term.

ARTICLE 8

INSURANCE

8.1 Insurance to be Maintained by Manager. Throughout the term of this Agreement, Manager shall carry insurance in the types and amounts specified below. Manager agrees to furnish to Corporation certified copies of all policies as evidence thereof:

a. All risk coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief on the building facility and City owned or Corporation owned contents contained within the Facility. The coverage shall be at replacement cost with a 100% coinsurance clause and the Corporation shall be shown as a mortgagee, and the Corporation and City shall be loss payees on the policy.

b. Comprehensive Electronic Data Processing coverage for hardware, software, and related equipment located at the Facility, at replacement cost with a 100% coinsurance clause. The policy shall provide coverage for interruption of power and electrical disturbance.

c. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Worker's Compensation Act, as amended from time to time, and minimum policy limits for employers' liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee. The policies shall contain these endorsements in favor of the City and Corporation:

- i. Waiver of Subrogation
- ii. 30 day Notice of Cancellation

d. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$5,000,000. Coverage shall include, at a minimum, Personal and Advertising Injury Liability coverage and Products and Completed Operations coverage with a separate aggregate limit of \$5,000,000. The policy shall contain the following provisions:

- i. Blanket contractual liability coverage
- ii. City and Corporation indicated as additional insureds
- iii. 30 day notice of cancellation in favor of the City and Corporation

iv. Waiver of transfer right of recovery against others in favor of the Corporation and of the City

v. Aggregate limits of insurance per location endorsement

vi. Independent contractors' coverage

e. Security guard liability coverage with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. Personal injury coverages, including coverage for false arrest, shall be provided. The policy shall contain the following provisions:

i. City and Corporation named as additional insureds

ii. 30 day notice of cancellation in favor of the City and Corporation

f. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of City and Corporation:

i. Waiver of Subrogation endorsement

ii. 30 day notice of cancellation endorsement

g. Errors and Omissions coverage, not less than \$500,000 per claim, shall be in place for protection from claims arising out of the performance of professional services. Coverage shall be continuous for not less than 24 months following termination of the Agreement, including any renewals. Coverage, including any renewals, shall have a retroactive date coincident with or prior to the date of this Agreement.

h. General Requirements.

Manager agrees not to commence work until it has obtained the required insurance as described in this Section 8.2, and until such insurance has been reviewed by City and Corporation. So long as Corporation provides adequate funding therefor, Manager shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or as required under this Agreement.

Insurance is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B + VII or better. Workers compensation coverage written by the Texas Workers Compensation Insurance Fund shall be acceptable. Professional liability and Security Guard liability coverage shall be written by companies acceptable to City and Corporation.

All endorsements naming the City of Austin, such as additional insured, waivers, and notice of cancellation endorsements, as well as insurance certificates, shall indicate: City

of Austin, Parks and Recreation Department, P.O. Box 1038, Austin, Texas 78767-8828
ATTN: Director of PARD. If this Agreement is assigned, these endorsement
requirements shall apply to the assignee and Manager agrees to notify any assignee or
proposed assignee of such requirements.

The "other" insurance clause shall not apply to the City or Corporation where City or
Corporation, as applicable, is an additional insured shown on any policy. It is intended
that policies required in the Agreement shall be considered primary coverage as
applicable.

If insurance policies are not written for the amounts specified above, the Manager shall
carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess
Liability Insurance is provided, it shall follow the form of the primary coverage.

Corporation shall be entitled, upon request and without expense, to receive certified
copies of policies and endorsements thereto and may, so long as the excess cost thereof is funded
by the Corporation and properly included in the Budget, make any reasonable request for
deletion or revision or modification of particular policy terms, conditions, limitations, or
exclusions except where policy provisions are established by law or regulations binding upon
either Corporation or Manager or the underwriter on any such policies.

City and Corporation reserve the right to review the insurance requirements set forth
during the effective period of this Agreement and to make reasonable adjustments, so long as
the excess cost thereof is funded by the Corporation and properly included in the Budget, to
insurance coverage, limits, and exclusions when deemed necessary and prudent by City and
Corporation based upon changes in statutory law, court decisions, the claims history of the
industry or financial condition of the insurance company.

8.2 Indemnity. To the extent allowed by law Manager and Corporation shall
indemnify defend and hold harmless the other party and the City and their respective officers,
agents, employees, directors, and shareholders ("the Indemnified Parties") harmless of, from,
and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and
expenses (including reasonable attorneys' fees and costs of court), including claims for personal
injury, that any or all of the Indemnified Parties may hereafter suffer or incur in connection
with, related to or in any way, directly or indirectly, arising out of the performance by Manager
or Corporation or its representatives, agents, employees, or subcontractors, of its obligations
under this Agreement.

8.3 Waiver of Subrogation. The parties release each other and their respective
Authorized Representatives, from any claims for damage to any person, the Facility or any
fixtures, personal property, improvements and alterations of either party in or about the Facility
that are caused by or result from risks insured against under any insurance policies required to
be carried by the parties under this Agreement, whether or not the cause thereof results from

the negligence (whether ordinary or gross of any party to this Agreement). The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

8.4 Survival. All obligations of the parties under this Article 8 shall survive the expiration or early termination of this Agreement.

ARTICLE 9

TERMINATION

9.1 Termination for Cause. Either party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 10.1, by the other party and the failure of the breaching party to cure the Material Breach in accordance with Section 10.1.

9.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debts as they mature, or the liquidation, dissolution or termination of the corporate or partnership existence of Manager or the failure of the City of Austin to appropriate funds sufficient to meet the budget for the succeeding year, subject to the provisions of Sections 4.7 and 4.8.

9.3 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to Corporation, returning all balances in the Operating and Working Capital Funds to Corporation, leaving equipment, supplies, manuals, books, records, and, inventories that are the property of Corporation or from funds made available by Corporation, and Corporation shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for Corporation during the term of this Agreement.

ARTICLE 10

BREACH

10.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

a. Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after written notice has been given to the breaching party;

b. Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after written notice has been given to the breaching party, except that if the breach cannot reasonably be cured within thirty (30) days, a Material Breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach.

10.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to the lesser of 12% per annum or the maximum non-usurious rate of interest permitted by applicable law.

10.3 Notice of Breach. Each party shall promptly notify the other party in writing of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 10.1 or 10.2, a notice of a breach must state that it is a notice of breach and must specify the act or omission alleged to constitute a breach of this Agreement.

10.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

a. The right to cure, at the breaching party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 10.2;

b. The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 10.2;

c. The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of a Material Breach other than breach in the payment of money;

d. The right to terminate this Agreement; or

6. The right to injunctive relief including seeking specific performance of the breached obligation.

ARTICLE 11

MISCELLANEOUS

11.1 **Notices.** Unless expressly otherwise provided elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when telecopied, telegraphed or telexed to a party, at such party's address set forth below or at such other address as a party may designate by notice given to the other in accordance with the foregoing.

To Corporation:

Director, Parks and Recreation Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828
Attention: Jesus Olivares

With a copy to:

City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

To Manager:

Manager/HHI, LTD.
Eleven Greenway Plaza
Suite 3000
Houston, Texas 77046
Attention: President

With a copy to:

Denis C. Braham
Winstead Sechrest & Minick P.C.
910 Travis, Suite 1700
Houston, Texas 77002

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. on any day which is not a business day, be deemed received on the next following business day.

11.2 Amendments. This Agreement may be amended only by the written consent of the parties.

11.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Schedules" are to be Articles and Sections of and Schedules to this Agreement.

11.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

11.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

11.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, successors, and assigns by this provision shall not be deemed to permit any assignment by a party of any of his rights or obligations under this Agreement except as expressly provided herein.

11.7 Assignment. Manager shall not voluntarily assign or encumber its interest in this Agreement without first obtaining Corporation's written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without Corporation's consent shall be void. Manager shall, however, have the right without Corporation's consent, to assign this Agreement as follows, provided the assignee has net worth comparable to Manager's net worth: (i) to a general or limited partnership if (A) Manager is a general partner and (B) the partnership executes an agreement required by Corporation assuming Manager's obligations; (ii) to a corporation if (A) Manager or its principals own the majority

of the outstanding stock of the corporation entitled to vote on the election of directors and (B) the corporation executes an agreement required by Corporation assuming Manager's obligations; or (iii) to a corporation with which Manager has merged or consolidated, to any principal of Manager or any parent or subsidiary of any such principal or of the Manager, or to a purchaser of all or substantially all of Manager's assets, if the assignee executes an agreement required by Corporation assuming Manager's obligations under this Agreement. The provisions of this Section 11.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank or other institutional lender providing credit to Manager or any of its Affiliates.

11.8 Further Action. Each party, within thirty (30) days after notice from the other party, shall execute and deliver to the party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, and the other party is not, to the best of the party's knowledge, in default under this Agreement or stating the exact nature of any default alleged to have occurred.

11.9 Entire Agreement. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

11.11 Applicable Law; Attorneys' Fees. This Agreement calls for performance and shall be performable in Travis County, Texas and shall be governed by, and construed and enforced in accordance with the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), and venue for any dispute arising hereunder shall be exclusively in the state courts of Travis County, Texas. The prevailing party in any litigation or other similar proceeding relating hereto, or for the enforcement of the provisions hereof, shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing party in such action.

11.12 Force Majeure. Neither party hereto shall be liable or responsible to the other party for delay, damage, loss, failure or any inability to perform any of its respective obligations, covenants, and conditions caused by "Force Majeure" if notice is provided to the other party within ten (10) days of actual knowledge of the event of Force Majeure that such party is unable to perform. The term "Force Majeure" as used in this Agreement shall include the following: an act of God, strikes, lock-outs, war, riot explosions, industrial disturbances,

acts or restraints of any government authority (civil or military), acts of the public enemy, laws, rules and regulations of Governmental Entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), civil commotion, blockades, insurrections, acts of terrorists or vandals, earthquakes, landslides, sinkholes, hurricanes, washouts, breakage or accidents to equipment or machinery, any material interruption of utilities at the Facility not willfully caused by a party hereto, a confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, accidents to equipment or machinery, epidemics, lightning, fire or other casualty, storm, floods and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome. In no event, however, shall the failure to pay any liquidated sum of money by either party be an event of Force Majeure.

11.13 Confidential/Proprietary Information. Manager understands and acknowledges that both Corporation and City are subject to the Texas public information and open meetings laws and regulations, and that the ability of Corporation and City to maintain the confidentiality of any information or data received pursuant to this Agreement will be subject to such laws and regulations. City shall notify Manager promptly in writing upon receipt by the City or Corporation of an open records or other request for information provided by or relating to Manager or the Facility.

11.14 No Third Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, Corporation and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third party beneficiary of this Agreement.

11.15 Gratuities and Kickbacks. It shall be a breach of Manager's obligations hereunder to offer, give, or agree to give any employee of City or Corporation or former employee of Corporation a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to or solicitation of any contract or proposal therefor by Manager from City or Corporation.

11.16 Limitation of Liability.

(a) Notwithstanding any contrary provision hereof, Corporation agrees that no partner, co-venturer, employer, agent, director, officer, shareholder, or Affiliate of Manager shall be personally liable to Corporation or anyone claiming by, through or under Corporation solely by reason of any default by Manager under this Agreement, any obligation of Manager

to Corporation, or for any amount that may become due to Corporation by Manager under the terms of this Agreement or otherwise.

(b) Notwithstanding any contrary provision hereof, Manager agrees that no employee, official, agent or director of the Corporation shall be personally liable to the Manager or anyone claiming by, through or under the Manager solely by reason of any default by the Corporation under this Agreement, any obligation of Corporation to Manager, or for any amount that may become due to Manager by Corporation under the terms of this Agreement or otherwise.

11.17 No Representation as to Operations Results. Corporation recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of Manager. Manager has made no and disclaims any purported or actual representation or warranty as to the financial results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues, or Operating Expenses or the accuracy of its projections and estimates thereof. Corporation recognizes and accepts that all Budgets and projections represent Manager's estimate of the expected expenditures and revenues and that Manager is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: Jesús M. Olvera
Name: Jesús M. Olvera
Title: Chairman of the Board

LMI/HHL, LTD.

By: **SCM Holdings, Inc., General Partner**

By: Mike McGee
Mike McGee
President

AU970270914
022497 v19
267:8167-95

Facility Management Agreement
Exhibit B: Section 4.3 of Financing Agreement

FINANCING AGREEMENT

between

**CITY OF AUSTIN
(City)**

and

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION
(Corporation)**

completion of the Improvements. Corporation shall monitor the activities of the Facility Manager and report to the City as required by this Agreement.

Section 4.3 **Affirmative Covenants.** At all times during construction of the Improvements and operation of the Mortgaged Property, the Corporation shall:

- (a) permit the City and its representatives, to enter upon the Land and into the Improvements, to inspect them and all materials to be used in the construction of the Improvements and to examine the Plans;
- (b) comply strictly with all Legal Requirements;
- (c) deliver to the City, or its representatives, immediately upon demand, counterparts and/or conditional assignments of all Construction Contracts, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which the Corporation claims title to any materials or supplies used or to be used in the construction of the Improvements;
- (d) either cause each Construction Contract to contain a provision specifically subordinating any Lien right against the Mortgaged Property to the Liens created by the Financing Documents or cause the other party thereto to execute instruments, acceptable in form and substance to the City, to accomplish such subordination;
- (e) if requested by City, furnish to City, immediately after the pouring of each concrete slab, street and curbstone within the Land, the completion of each foundation of a structure forming part of the Improvements and the completion of the Improvements, a survey certified to the City by a licensed engineer acceptable to the City showing all of same and that the location thereof is entirely within the property lines of the Land and does not encroach upon, breach or violate any building line, easement or similar restriction;
- (f) use all Advances made to it by the City for, and only for, payment of the costs itemized in the Approved Capital Budget or Approved Operating Budget and under no circumstances use, directly or indirectly, any portion of such Advances for any other purpose;
- (g) obtain and maintain, in full effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance) and a hazard insurance policy or policies in builder's all risk form with loss payable endorsements acceptable to the City insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, all such insurance policies to be issued by companies, in amounts and on terms approved by the City;

- (h) if the City requests, furnish the City with a current list of original contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Improvements;
- (i) store at the Mortgaged Property or at other locations approved by the City in writing all materials acquired or furnished for construction of the Improvements but not affixed or incorporated into the Mortgaged Property, in each case under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects;
- (j) upon demand of the City correct any structural defect in the Improvements or any material departure from the Plans not accepted by the City, and no Advance shall waive the City's right to require compliance with this Section 4.3 with respect to any such defects or departures; and
- (k) perform all other Obligations when due. Within five days after Completion, the Corporation shall execute and file an affidavit of completion in accordance with Section 53.106 of the Texas Property Code, deliver copies thereof to all Persons specified in such Section 53.106 within the time period required thereunder, and provide copies thereof to the City.

Section 4.4 Negative Covenants.

- (a) The Corporation shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Mortgaged Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto.
- (b) The Corporation shall not create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any Lien on the Mortgaged Property (or any portion thereof) other than those created by or expressly permitted under the Loan Documents, regardless of whether it is expressly subordinate to the Liens created in the Financing Documents. If any such Lien is asserted against the Mortgaged Property (or any portion thereof), the Corporation shall promptly give the City notice thereof. The notice shall specify who is asserting such Lien and shall detail the origin and nature of the underlying claim giving rise to the asserted Lien.
- (c) The Corporation shall not enter into any contract with any party, other than City, for the demolition, construction, reconstruction, rehabilitation, use,

Facility Management Agreement
Exhibit C: Recreational Activity Improvements

A. Recreational Activity Programming, Access, and Utilization:

Establish utilization goals per program area

2. Beginning upon signature of this Agreement, implement 3 of the new program ideas below in year one, and implement 2 additional new program ideas each following year. Select from the list below:

Develop membership incentives

Expand theme nights per community input

Utilize access passes for patrons (e.g., wrist band; stamp) allowing patrons to re-enter activities in same day

Reservations:

7-day reservation and payment access (online)

Celebrate Juneteenth and anniversary MYEC Open House - Invite entire community

Restore designated tots area/activities/hours (consider flexible set/take down amenities)

Expand entertainment venues to include small-scale performing arts venues: e.g. for concerts; rapping and singing contests; standup comedy nights

Add programming

Resume teen dances

Offer competitive game leagues

Poetry slams and creative writing contests

Offer facility for community meetings at rates specified in the City Council approved fee schedule (that are for non-fund raising purposes) if they occur during business hours and do not interfere w/ facility operations or reservations, or require additional staff resources

Set up/offer activity areas: table games (e.g., cards, chess backgammon competitions)

Summer camp program that offers an affordable package of activities (5-day camp registration, MYEC supervised activity, play)

B. Recreational Services Feedback:

Implement community-wide focus group input meetings every 2 years, beginning 2010

Improve refund policy: when facility is unable to offer services per agreement:

Patron should be notified in writing

Offered a comparable service(s) or amenity, as an option

Confirm patron's decision to acceptance or reject the comparable service offer, in writing

Refund the patron upon request the appropriate value of the service not rendered

Establish a written complaints resolution process: Document, track, and report a summary of customer complaints and complaints resolution to ARCDC, at least quarterly.

C. Recreational Activity Outreach:

1. Publicize facility and programming as City of Austin owned and funded; add City logos to all advertising and building signs; comply with City of Austin/Parks & Recreation Department guidelines for publications

2. Maintain an accurate and updated website, including:

Hours of Operation

Event Calendar

Reservation Procedures & Accurate Fees

Refund Policy

Report Community Outreach Efforts to the corporation

**Facility Management Agreement
Exhibit D: Sample Media Activity Report**

Austin-Rosewood Community Development Corporation
Millennium Youth Entertainment Complex

Inquiry

Media Inquiry Submitted by:		Facility: Millennium	
Media Inquiry Assigned To:		Cell/Pager:	
Media Affiliate:	Media Type:**	Media Representative:	Phone Number:

** Note whether media inquiry type is newspaper, radio, television, etc..

Report

Submitted by:		Facility: Millennium	ID:
Assigned To:		Cell/Pager	
Description:			
Response/Action:			
Media Affiliate:	Media Type:	Media Representative:	Phone:
Attachments:			

Questions regarding form completion may be directed to Victor Ovalle, City of Austin Parks and Recreation Department Public Information Officer, at 974-6745.



Amendment No. 6
to
Contract No. NA080000157
for
Facility Management Agreement
between
SMG n
and the
City of Austin

1.0 The City hereby increases the above contract in an amount of \$140,622.18 representing a Capital Expenditure Budget in accordance with the terms of the contract:

4.5 Capital Expenditure Budget. Not later than February 1 of each year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a proposed Capital Expenditures Budget for the following Fiscal year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for Corporation.

2.0 All other terms and conditions remain the same.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: _____

Cruz Banda, Buyer II
City of Austin
Purchasing Office

Date: _____

Reviewed and Approved: _____

Stephen T. Aden

Date _____



Amendment No. 5
to
Contract No. NA080000157
for
Facility Management Agreement
between
SMG n
and the
City of Austin

1.0 The City hereby increases the above contract in an amount of \$6,732 representing an annual shortfall amount in accordance with the terms of the contract:

4.9 Shortfall. Manager is responsible for anticipating operating budget shortfalls. If the Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager as soon as shortfalls are anticipated to request additional funds from the Corporation and such request shall be made in writing at least thirty (30) days before such funds are needed. A shortfall in and of itself that is not the result of emergency expenditure does not constitute an emergency for purposes of "emergency expenditures."

2.0 All other terms and conditions remain the same.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: _____

Cruz Banda, Buyer II
City of Austin
Purchasing Office

Date:

Reviewed and Approved:

N/A

Stephen T. Aden

Date



The Millennium
Youth Entertainment Complex

May 20, 2009

Cindy Reyes
3rd Floor Municipal Building
124 W 8th Street
Austin, Texas 78701

Re: Contract #NA080000157 MYEC Operations

Good Morning Ms. Reyes,

The MYEC General Manager, V. Silas, is responding to your question of whether the SMG plans to renew their contract with the City of Austin which expires in June 2009.

The enclosed contract represents and extension of the current contract ending in June 2009 to September 30, 2009. It also renews the contract from October 1, 2009 through September 30th 2012. There are two year extension options also included.

I trust this documentation supports SMG's contract continuity to manage the Millennium Youth Entertainment Complex.

A handwritten signature in dark ink, appearing to be "V. Silas", is written over a faint, circular, light-colored stamp or watermark.

V. Silas, General Manager/ J McNeil, Manager
The Millennium Youth Entertainment Complex"
1156 Hargrave Street
"On the East Side"
Austin, Texas 78702
512 472-6932



MEMORANDUM

To: Purchasing Officer

From: Angela Means, Financial Services Division Manager
Parks and Recreation Department

Date: June 12, 2008

Subject: Millennium Youth Entertainment Complex

The Parks and Recreation Department (PARD) was notified in April 2008 by Vanessa M. Silas, General Manager of Millennium Youth Entertainment Complex (MYEC), that the MYEC is requesting additional funds for Fiscal Year 2008 of \$55,008 to cover MYEC operating expenses. Due to the decline in attendance from excessive rains and flooding in June and July, the MYEC revenue is declining.

The MYEC is managed by SMG, Inc., a national facilities management company, under a multi-year contract with the City of Austin. The current management contract was extended in June 2004 to June 2009.

I am requesting a payment of \$55,008. If you have any questions, please call me at (512) 974-6712.



**MEMORANDUM
TO THE FILE**

**City of Austin
Financial Services Department
Purchasing Office**

DATE: 06/19/08

FROM: Cruz Banda, Buyer II
Phone # 974-2133

RE: Master Agreement for Millennium Youth Entertainment Complex

This master agreement is being entered in AIMS in accordance with Approval from Cynthia Gonzales, Acting Deputy Purchasing Officer and Byron Johnson, Purchasing Officer.

Three documents support the entering of this agreement for payment purposes:

1. Parks and Recreation 2007-08 Approved Budget, \$703,982
2. Recommendation for Council Agenda Item No.52, Agenda date 09/12/96, RCA Type Resolution
3. Facility Management Agreement, By and Between, LMI/HHI, LTD d/b/a Leisure Management International and Austin-Rosewood Community Development Corporation.
4. RCA dated, 6/15/08 - Item 22 regarding the Austin-Rosewood Community Development Corporation, a local government corporation for the purpose of overseeing the operations of the Millennium.

The amount to be loaded on this date is the remaining balance for Operating Expenses for 2008. To this date the total amount disbursed on quarterly payments is \$497,250.

2007-08 Budget Amount-	\$703,982
Quarterly Payments to date-	<u>\$497,250</u>
Remaining balance to be loaded=	\$206,732

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Phil Wilson
Secretary of State

Office of the Secretary of State

June 13, 2008

Angela Y Means
AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION
200 SOUTH LAMAR
Austin, TX 78704

RE: AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION
File Number: 137840401

This is to advise you that the above referenced corporation's report required by article 1396-9.01, Texas Non-Profit Corporation Act, has been filed in this office. This letter may be used as evidence of the filing and payment of the filing fee.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: Michelle Ledesma

Fax: (512) 463-5709
TID: 10195

Dial: 7-1-1 for Relay Services
Document: 218929080002

ARCDC

**MYEC 2010
Contract Renewal**

1156 Hargrave St., Austin, Texas 78702.
(512) 472-6932~www.myec.net~
FAX: 478-4193
ADA Compliant



WORLDWIDE ENTERTAINMENT AND
CONVENTION VENUE MANAGEMENT

JOHN F. BURNS
Executive Vice President & CFO

P: 610.729.7903
F: 610.729.1593
jburns@smgworld.com
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428
www.smgworld.com

February 25, 2009

Ms. Sabine Romero
City of Austin Law Department
301 W. 2nd Street
Austin, TX 78767

Re: Millennium Youth/Austin

Dear Ms. Romero:

Enclosed are two copies of the Management Agreement which I have executed on behalf of SMG.
Please return one copy at your earliest convenience.

We look forward to continuing our relationship with the City of Austin and the Austin Rosewood
Community Development Corp.

Sincerely,

A handwritten signature in black ink, reading "John F. Burns", followed by a long horizontal flourish line.

John F. Burns

JFB/jjm
Enclosure

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FACILITY MANAGEMENT AGREEMENT
SECOND EXTENSION AND RESTATEMENT

THIS FACILITY MANAGEMENT AGREEMENT ("**Agreement**") extension as amended is effective October 1, 2009, by and between SMG, a Pennsylvania general partnership ("**Manager**"), and AUSTIN-ROSEWOOD COMMUNITY DEVELOPMENT CORPORATION, a Texas local government non-profit corporation ("**Corporation**").

This is the second extension of the pre-existing facility management agreement (attached hereto as **Exhibit A**), which is amended in its entirety by the provisions hereof. The pre-existing facility management agreement at **Exhibit A** remains in effect ("**Pre-Existing Agreement**"); provided, however that the parties desire to amend the Pre-Existing Agreement so that it extends through to the end of the current Fiscal Year, September 30, 2009, as set forth below.

RECITALS

The City of Austin ("**City**") owns a 4.978 acre tract of land in Austin, Texas. On November 16, 1995, the City Council adopted a resolution approving the creation of the Corporation under Subchapter D of Chapter 431, Texas Transportation Code, for the purpose, among others, of developing the tract of land.

In 1996, the City entered into a Financing Agreement ("**Financing Agreement**") with Corporation requiring Corporation to construct on such land the Central City Entertainment Center, later renamed the Millennium Youth Entertainment Complex, a public family-oriented entertainment center for youth, which complex with all facilities, machinery, attachments, and appurtenances now or hereafter attaching thereto, is hereafter referred to as the "**Facility**." Section 4.3 of the Financing Agreement, creating certain affirmative covenants from the Corporation to the City, is attached as **Exhibit B** and is hereby made a part of this Agreement.

The mission of the Facility was determined by the Austin community and confirmed through the City of Austin Council appointed committee, The Central City Entertainment Center Committee. The mission, as recorded, is to provide a safe, secure, and comfortable environment (free from drugs, gangs, crime, and violence) where families can enjoy a wide range of affordable, high quality recreational and entertainment activities and attractions ("**Mission**").

The Facility is a 55,000 square foot facility. Entertainment and recreational activities and attractions are represented in the following activity centers: 16 lanes of Bowling, a roller skating (entertainment) arena, a video arcade, 154 seat movie theater, and a food court. These cost centers are represented in the annual facility budget described below.

It is Corporation's intention that the Facility shall be operated in a professional manner within the Mission, while attempting to maximize the utilization of and revenues produced by the Facility for the benefit of Corporation and Attempting to minimize, to the extent reasonable and practicable, the net cost to Corporation.

In 1996, the City issued RFP No. KM96300004, requesting proposals for Facility management. The City issued two RFP addenda.

Corporation, after reviewing proposals received from private entities for pre-opening consulting and planning services and for post-opening Facility management services, selected LMI/HHI, LTD., d/b/a/ LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership, as the best qualified party to provide such services for the Facility. Corporation and LMI signed the initial Facility Management Agreement effective March 5, 1997, for a five year term, with the option for up to three five-year extensions.

In 1999, the Corporation and Manager signed agreement Amendment 3, extending the Facility pre-opening date.

In 2000, LMI/HHI, LTD., d/b/a/ LEISURE MANAGEMENT INTERNATIONAL, a Texas limited partnership, merged with SMG. The merger assigned, with the consent of the City, LMI's role as manager to Manager.

In 2004, the Corporation and Manager signed agreement Amendment 4, which included the exercise of an extension option effective June 18, 2004 to June 17, 2009, with two remaining five-year options.

The Manager holds itself out as an organization whose principals have substantial experience and expertise in the management, operation, and marketing of public assembly facilities.

Corporation has determined to grant to the Manager, and the Manager has agreed to accept, the authority and responsibility to manage, operate, and market the Facility in accordance with the terms of this Agreement, which, as indicated above, is intended to amend in its entirety the Pre-Existing Agreement.

ARTICLE I

DEFINITIONS

The following words shall, unless the context otherwise requires, have the meanings ascribed to them below.

1. "Affiliate" of a specified person means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.
2. "Advertising" means all announcements, acknowledgements, banners, signs, showbills, promotional materials, handouts, and promotional product sampling give-aways, and

other audio or visual commercial messages displayed, announced or otherwise presented in the Facility including, without limitation, video messages.

3. "Agreement" means this Facility Management Agreement.

4. "Authorized Representatives" means the individual designated by each party pursuant to Section 2.4.

5. "Base Operating Expense Amount" means the amount designated in each Budget as the "Base Operating Expense Amount" for the Fiscal Year in question.

6. "Base Operating Revenue Amount" means the amount designated in the Budget as the "Base Operating Revenue Amount" for the Fiscal Year in question.

7. "Budget" shall mean any budget to be prepared by Manager and approved by Corporation under the provisions of Article 4.

8. "Capital Expenditures" means all expenditures in excess of One Thousand Dollars (\$1,000) for building additions, alterations, or improvements, and for purchases of additional or replacement furniture, machinery, or equipment, the depreciable life of which, according to accepted accounting principles, is in excess of one (1) year and expenditures for maintenance or repairs which extend the useful life of the assets being maintained or repaired for a period in excess of one (1) year. Each Capital Expenditures Budget shall set forth the anticipated Capital Expenditures to be made during the Fiscal Year to which the Budget relates and the five (5) and ten (10) year Capital Expenditures forecast.

9. "Commencement Date" means the date Corporation and Manager first entered into a facility management agreement for this Facility, March 5, 1997.

10. "Corporation" means the Austin-Rosewood Community Development Corporation.

11. "Depository" means the financial institution in which Manager shall maintain its bank accounts for the funds required to be maintained under this Agreement.

12. "Emergency Expenditure" means an unanticipated procurement necessary to preserve or protect the public health or safety of the City's residents.

13. "Event(s)" means all activities and events which are conducted at the Facility and scheduled by the Manager.

14. "Facility" means the Millennium Youth Entertainment Complex, including all of the parking areas and garages appurtenant thereto.

15. "Fiscal Year" means a twelve month period of time beginning on October 1 and ending on the immediately following September 30.

16. "General Manager" means the chief operating officer of Manager at the Facility.
17. "Governmental Entities" means the federal government, the State of Texas, the City of Austin, or any county, municipality (or any entity created by a municipality), governmental, or quasi-governmental entities having jurisdiction or other authority over the Facility.
18. "Management Fees" means the fees payable to Manager under Article 7.
19. "Manager" means SMG.
20. "Material Breach" shall have the meaning provide in Section 10.1.
21. "Material Contract" shall be those contracts which (1) would require Corporation approval; (2) permit a similar user or promoter to utilize the Facility for more than twenty-five (25) event days in any Fiscal Year; or (3) have a term in excess of three (3) years (including renewal options exercisable by any party) and which may not be cancelled by Manager or Corporation without penalty or premium.
22. "Operating Expenses" shall mean and include all expenditures by Manager in any specified period during the Term of this Agreement, within the authority or responsibility of the Manager under this Agreement, including, but not limited to, all payments made to obtain Operating Revenues; salaries, wages and benefits of personnel working at the Facility; contract labor; maintenance and repairs; utilities; telephone; telescreen and/or scoreboard operations; dues, memberships and subscriptions; security; audit fees, legal fees directly related to the performance of this Agreement; other professional fees; fees paid to concessionaires or other subcontractors; refuse removal; cleaning; sales taxes; building supplies; ticket commissions; premiums for insurance maintained under Section 8.1; data processing; Advertising; marketing; public relations; pest control; travel, lodging and related out-of-pocket expenses and Facility related entertainment; office supplies; employment fees; freight and delivery; lease of equipment; Master Card, VISA, and other credit and debit facilities and telecheck fees and expenses; travel, lodging, and related out-of-pocket expenses of officers and directors of Manager properly allocable to the performance of Manager's obligations under this Agreement; all damages, losses, or expenses paid by Manager or its Authorized Representative as the result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable attorneys fees incurred in litigation against Manager or its Authorized Representative under this Agreement; but excluding any Capital Expenditures, amortization, depreciation, and other non-cash charges and any losses, damages, or expenses suffered by Manager or its Authorized Representative as a result of (1) any uninsured negligent act or omission of Manager or its Authorized Representative; (2) any transaction from which Manager or its Authorized Representative derives an improper personal benefit; or (3) any willful Material Breach on the part of Manager.
23. "Operating Fund" shall mean a fund maintained by Manager under Section 5.1.

24. "Operating Loss" shall mean the amount by which Operating Expenses for any specified fiscal period exceed the Operating Revenues for such fiscal period.

25. "Operating Revenues" shall mean all receipts (including, without limitation, seat user fees and surcharges), revenues, income, and cash received or collected, as determined on an accrual basis, by Manager (1) for the use of, operation, or admission to, the Facility or any portion thereof; (2) for the right to sell, or in respect of the sale of, any product or advertisement in the Facility including all rents, royalties, and concessions from tenants, concessionaires, and licensees; (3) from interest on or proceeds of investment of any accounts required to be maintained under Article 5; (4) for rental or use of the Facility equipment; or (5) as fees for services rendered at the Facility, including parking; but excluding, in all events, sums received or collected by Manager for and on behalf of and actually paid to a user of the Facility.

26. "Operations Start Date" shall mean the later of (1) the date of issuance of a final and unconditional certificate of occupancy or other similar governmental permit or license for the entire Facility or (2) if requested by Corporation, the date of issuance of any temporary certificate of occupancy or similar governmental permit or license permitting an Event to be conducted at the Facility; or (3) the date the Facility actually opens to the public.

27. "Term" shall mean the time period described in Section 2.3.

ARTICLE 2

INTRODUCTION

2.1 Grant of Authority. Corporation hereby grants to Manager, and Manager hereby accepts, the exclusive right and obligation, in its own name, as an independent contractor and not as an agent of the Corporation, to provide those management services to Corporation as are set forth in this Agreement in connection with Manager's management, operation, and administration of the Facility and, in connection therewith, to perform or furnish or cause to be performed or furnished, subject to the provisions hereof, and subject to the availability of funds, all of such management services all upon the terms and subject to the limitations of this Agreement. Manager and Corporation acknowledge and agree that Manager shall retain control of the Facility as the manager and operator thereof pursuant to this Agreement, but that Manager may delegate certain specific and limited responsibilities related to the management and operation of the Facility to third parties, but shall retain the exclusive authority and responsibility with respect to the management and operation of the Facility.

2.2 Nature of Relationship. The parties agree that the only relationship created by this Agreement is that between Corporation, as owner, and Manager, as an independent contractor, for certain management and operating services assigned to Manager by Corporation and that Manager is an independent contractor, not an agent, employee, joint venturer, or partner of Corporation.

2.3 Term.

a. The term of this Agreement extension is three (3) years (October 1, 2009 to September 30, 2012), with the option for a two (2) year extension (October 1, 2012 to September 30, 2014), subject to the termination rights outlined in this Agreement.

b. Prior to one hundred and eighty (180) days before the expiration of the three year term described in Section 2.3a. above, either party may call for renegotiation. Prior to one hundred and eighty (180) days before the end of the two year extension described in 2.3a., either party may call for renegotiation to extend the agreement. If the parties cannot, through good faith negotiations, reach agreement on the terms and conditions of an extension prior to one hundred and twenty (120) days before expiration, this Agreement shall automatically terminate at the end of the then-current term. In no case may this Agreement be extended for more than three (3) five (5) year extensions, without City Council approval.

2.4 Contract Administration. Corporation hereby appoints the Corporation President and Manager hereby appoints SMG's Regional Vice President (or his or her designee in writing) as their respective Authorized Representatives, each of whom shall act as liaison and contact person between the parties in matters concerning the administration of this Agreement. Each party shall have the right to designate a substitute Authorized Representative by providing written notice to the other party. Except for budget matters, if either party desires to do any act hereunder which requires the other party's approval, such request shall be submitted in writing to the other party's Authorized Representative. The Authorized Representative shall respond to such request within fifteen (15) days after submittal, failing which the request shall be deemed approved. Manager understands and acknowledges that only the Corporation's Authorized Representative shall be authorized to make and/or communicate decisions to the Corporation regarding implementation of this Agreement, and Manager agrees to look exclusively to the Corporation for such input or information as Manager believes is necessary to carry out its duties under this Agreement.

2.5 Authority Regarding Closure of Facility. The parties agree that, in the event Corporation determines that continued operation of the Facility or any portion of the Facility is not feasible, Corporation shall have the authority to close the Facility or portion of the Facility, and Manager agrees to cooperate with Corporation in performing all acts necessary to accomplish such closure. If a portion of the Facility is closed as a result of the Corporation's closure pursuant to the immediately preceding sentence and not as a result of either Force Majeure or a temporary closing of the part of the Facility resulting from seasonal booking of certain Events precluding the booking of other Events, the parties agree that Manager's Management Fee, as described in Section 7.1, shall not be adjusted unless at least one-third of the Facility's public space is closed for more than ninety (90) consecutive days, in which case Manager and Corporation agree to negotiate an equitable adjustment to the Management Fee for the remainder of the time period that such space is not open to the public. If the entire Facility is closed, Corporation shall pay Manager not later than ten (10) calendar days following such

closure the aggregate of (i) all Management Fees owed to Manager as of the date of closure; (ii) all expenses, if any, incurred by Manager and not reimbursed as of such date, to the extent otherwise reimbursable under this Agreement; and (iii) a termination fee of seventy-five thousand dollars (\$75,000.00).

ARTICLE 3

RESPONSIBILITIES OF MANAGER

3.1 Standard of Care. Subject to the funding limitations set forth in this Agreement, Manager shall exercise its diligent, good faith efforts in managing and operating the Facility so as to minimize Operating Expenses and maximize Operating Revenues. Parties agree that Manager, in establishing and implementing its booking policies, may schedule not only those events that generate substantial direct revenue to the Facility, but also those events that produce less direct revenue but, in Manager's good faith judgment, generate either a significant economic, cultural, or other benefit to Corporation or otherwise serve the public interest; provided that Manager shall ensure the Facility is used for a public purpose that furthers the Facility's Mission, and not permit the Facility to be used without a reasonable charge for such use unless fees are specifically waived by a vote of City Council.

3.2 Duty and Liability. Manager shall owe to Corporation a duty to perform its obligations under this Agreement and to conduct the management and operation of the Facility at all times with integrity and good faith and in a manner which is in the best interests of the Facility and Corporation and consistent with the terms of this Agreement. Manager shall not be liable, responsible, or accountable in damages or otherwise to Corporation for any act or omission that is within the scope of its authority under this Agreement, except for (i) acts or omissions constituting negligence which are not covered by insurance; (ii) acts or omissions of Manager not in good faith or involving gross negligence, intentional misconduct, or knowing (i.e., conscious awareness) violation of law, (iii) any transaction from which Manager derives an improper personal benefit, or (iv) any willful Material Breach on the part of the Manager.

3.3 Management Duties and Responsibilities. Subject to the limitations set forth in this Agreement, Manager, or person or persons designated by Manager, shall do the following (or cause the same to be performed) throughout the Term hereof after the Operations Start Date:

a. Manage and operate the Facility and any facilities ancillary thereto and contract for its use in a manner that will promote and further the purposes for which the Facility is to be constructed, as set forth in the Recitals to this Agreement;

b. Negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements (i) with persons who desire to schedule events, performances, telecasts, broadcasts, or other transmissions in, from, or to the Facility or who desire otherwise to use the Facility or any part thereof or (ii) that otherwise pertain to the use, operation, and occupancy of the Facility or any part thereof.

c. Coordinate (and participate in where necessary or applicable) all advertising, licensing, promotional activities, marketing, and public relations for or at the Facility, including an annual investment of \$15,000 per year of this Agreement (pro-rated in any year this Agreement is in effect for less than a year) in marketing or other priorities, as identified and to be spent in a manner agreed to by Corporation and Manager.

d. Negotiate, execute, and perform all contracts, use agreements, licenses, and other agreements (i) for the use of Advertising space in or about the Facility and all Advertising rights of whatever kind or nature related to the Facility or (ii) for the sale, promotion, marketing, and use of all names, trademarks, trade names, logos, and similar intangible property relating to the Facility;

e. Operate at and for the Facility the sale of food, beverages, souvenirs, novelties, and programs (either in house or through a concessionaire);

f. Select, schedule, and coordinate the efforts of all parties involved in the operation of the Facility and establish and maintain consistent procedures for cost estimating and reporting, maintenance and payment of invoices, including preparation of Budgets and reports as contemplated by Article 4;

g. Plan, coordinate, and administer operation of the Facility, including the expansion of activities per Exhibit C, within the constraints of the Budget described below, taking into account the input from the Corporation in the context of such Budget approval process;

h. Continue to identify, select, and train the Facility's staff;

i. Subject to the Budget, retain legal counsel in connection with the discharge of its duties hereunder and cause such counsel to coordinate with Corporation's legal department where necessary or appropriate;

j. Coordinate the work of all parties performing work in connection with the operation of the Facility;

k. Monitor actual and projected Operating Expenses, and advise Corporation of any projected or actual variances from the approved Budget(s) in monthly reports;

l. Make prompt payments of the Operating Expenses from funds available for that purpose under Article 5;

m. Furnish all services necessary to accomplish the foregoing requirements of this Section 3.3;

n. Perform such other consulting, administrative, or management services as reasonably requested by Corporation;

o. Devise and implement procedures reasonably designed to keep the Facility in good order and condition, subject to ordinary wear and tear, and maintain the Facility in such order and condition, per Section 3.9.

p. Market the sale of seats within the arena portion of the Facility;

q. Prepare monthly and year-to-date management reports regarding the Facility operations by segment and by concession to assist Corporation in planning, budgeting, cost control, performance evaluation, and revenue enhancement. These reports shall include, but will not be limited to, the following:

1. Patron attendance by use;
2. Monthly and year-to-date reports of revenues and expenses as compared to Budget;
3. Analyses of food and beverage concession and catering performance and income for the current period, year-to-date, and prior periods;
4. Analyses of other concession/contractor performance and income;
5. Analyses of event attendance and revenues on a per capita, average, and total basis; and
6. Other statistical reports requested by Corporation.

r. Implement and monitor comprehensive risk management and energy efficiency programs for the Facility;

s. Use reasonable efforts to comply with the Facility's MBE/WBE utilization plan as approved by Corporation and described in City Resolution 20071108-127. Such plans shall be prepared jointly by Corporation and Manager;

t. Maintain, for review by the Corporation upon reasonable notice, information as reasonably required by Corporation to satisfy Corporation's responsibilities, including information regarding injuries and unusual incidents at the Facility, and regarding security measures and safety programs (including recommendations for changes to the budget for such measures/programs) at the Facility;

u. If Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety or the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action and Corporation shall promptly accept (does not trigger obligation to fund) or reject such recommendations; and

v. Summarize all media inquiries to Corporation's authorized representative within 24 hours of interview, per Corporation format at Exhibit D.

3.4 Program Access and Utilization. Manager will exercise its diligence in managing and operating the Facility in a manner that maximizes public access, utilization of the facility, and reflects the community feedback study *The Millennium Youth Entertainment Center Community Focus Group Meeting Report for Austin Rosewood Community Development Corporation and Austin Parks and Recreation Department November 2008*. Manager shall establish annual utilization goals for each program area each year. Manager shall also periodically adapt programming to meet current community priorities and needs, as reflected in **Exhibit C**.

3.5 Compliance with the Law; Duty. Manager shall comply with all applicable laws, rules, regulations, and ordinances relating to the use and operation of the Facility. Manager shall perform its obligations hereunder in conformity with the standard to which an operator of a comparable multi-purpose public entertainment facility would operate. Subject to the foregoing, Manager shall promptly and fully discharge all of its obligations under this Agreement.

3.6 Funding Limitations. Notwithstanding anything to the contrary set forth in this Agreement, Corporation recognizes and agrees that performance by Manager of its responsibilities under Article 3 is subject to and conditioned upon provision of funds to Manager for such purposes as hereinafter provided, in addition to the Management Fees payable to Manager hereunder, to enable Manager to fulfill such responsibilities, and in all respects is limited by the Budgets submitted by Manager and approved by Corporation from time to time. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager to request additional funds from the Corporation as soon as shortfalls are anticipated (except for Emergency Expenditures for which there are adequate funds on hand) and any such request shall be made in writing at least thirty (30) days before such funds are needed. The requirement for a written request for funds shall not apply in the event of a need for an Emergency Expenditure if there is additional funding available in the Operating Fund to cover such Emergency Expenditure. **Manager accepts the limitations of the Budget and agrees that Corporation has no responsibility or duty to provide funds in excess of the approved Budget, as such Budget may be amended from time to time.** If additional funds are deemed necessary by the Corporation, Corporation agrees to request from the City Council of the City of Austin such additional funds.

3.7 No Construction or Design Responsibilities. Notwithstanding Manager's review of and recommendations with respect to the design, plans, and specifications for the Facility, Manager will not have responsibility to Corporation or any other person for or authority concerning the same and will not supervise or be responsible in any manner for construction related to the Facility. The parties acknowledge and agree that Manager shall not be responsible for the selection of architects, contractors, subcontractors, or suppliers; the prosecution of the work; the compliance of the work with the plans and specifications for the Facility or applicable law, rules, regulations, or codes; the completeness, adequacy, accuracy, reasonableness, or appropriateness of those plans or specifications; or otherwise with respect to the construction, improvement, or renovation of the Facility notwithstanding the obligations of Manager hereunder. Corporation acknowledges that Manager's recommendations, if any, are based solely upon Manager's practical experiences in the operation of public assembly facilities similar to the Facility. Corporation acknowledges and agrees to look to the contractor, subcontractors,

architects, engineers, and other design professionals for all matters related to the design and construction of any such construction work and not to Manager.

3.8 Maintenance and Repair. Maintenance and repair procedures must include a Preventative Maintenance Plan with monthly Progress Reports; submission to Corporation within ten business days of all facility maintenance service contracts; and annual safety inspections. Manager is responsible for overseeing and implementing routine maintenance (anticipated, regular, pro-active attention to upkeep of facilities and machinery) per the Budget, and Corporation is responsible for major capital repairs and improvements (expenditures related to facility and machinery break-down or upgrades). If the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the structural soundness or operational capability of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action, per 3.3(u).

3.9 Public Safety and Security. Public safety and security procedures must include a Safety Procedure Manual. Manager must maintain an up-to-date list showing all staff and individuals with security key or code access rights into the building, submitted to Corporation simultaneously with each addition or deletion of any individual to or from the list. If the Manager or any of its representatives at any time becomes aware of any condition that jeopardizes the public safety of the Facility, the Manager shall promptly advise Corporation in writing, and shall include recommendations for remedial action, per 3.3(u).

ARTICLE 4

RECORDS, ACCOUNTS AND REPORTS

4.1 Books/Records. The Manager shall maintain, with respect to its management and operation of the Facility, complete, separate and accurate books of accounts and records of its activities and finances, as reasonably required by Corporation or as required by applicable federal or state law. Such books of account and records shall be prepared and maintained in accordance with generally accepted accounting principles and industry standards.

4.2 Access to Facility Premises/Facility Information. Authorized representatives of Corporation and City shall be issued an identification credential authorizing their access to the Facility. Corporation President and one City facility management official designated by Corporation President shall be issued a key and/or access code for access the Facility; Corporation President and his/her designated City facility management official reserve the right to enter the building at any time with simultaneous telephone notice to Manager. Manager must maintain an up-to-date list of those authorized representatives with copy to Corporation. Upon reasonable prior notice (i.e. not less than twenty-four hour notice) to Manager and presentation of such identification credential, authorized representatives shall have the unqualified right during the hours that the Facility is open to the public and in a manner that is not disruptive to the activities of the Facility to: (a) enter upon Facility property and inspect the property and improvements, and (b) examine, copy, and make extracts of books, records, accounting, and financial data and any other documents or records concerning the management and operation of

the Facility. The Corporation shall each provide Manager with an up-to-date written list of authorized, credentialed representatives (i.e. whenever the list is revised).

4.3 Annual Audit Report & Annual Revenue Accounting Report. Not later than December 31 of each Fiscal Year during the term of this Agreement, the Manager shall furnish to Corporation an annual audit report for the previous Fiscal Year, which shall include a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the independent certified public accounting firm preparing the report, which shall be a firm of national reputation selected jointly by the Manager and Corporation. The engagement letter from the independent firm of certified public accountants shall contain a statement that the Corporation shall receive a copy of all audit work papers produced either by the Manager or the accounting firm during the annual audit of the financial statements. The notes to the audited annual financial statements shall contain a detailed breakdown of revenues by source and expenditures by category. The Manager shall deliver to the Corporation, at the same time it delivers the annual audit report, a copy of all of the audit work papers that underlie the audited annual financial statements.

In addition, the Manager shall furnish to the Corporation an annual report on agreed-upon procedures for the Manager's system of revenue accounting, for which report the Corporation shall determine the agreed-upon procedures, all in a manner consistent with the capabilities of the financial software utilized by the Facility.

4.4 Monthly Financial Reports. Within twenty-five (25) calendar days of the end of each calendar month, the Manager shall furnish to Corporation a report regarding the Facility's financial performance during the prior month, including all Operational Expenditures and Operating Revenues, for which report the Corporation shall determine the format and contents, all in a manner consistent with the capabilities of the financial reporting software. Format and contents will include but are not limited to cumulative expenditures and budget comparison to-date with variance; rolling monthly expenditures; anticipated shortfalls; and expense and revenue projections in comparison to fiscal year budgeted amounts.

4.5 Capital Expenditure Budget. Not later than February 1 of each year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a proposed Capital Expenditures Budget for the following Fiscal Year. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of capital budgets for Corporation.

4.6 Annual Operating Budget. Not later than February 1 of each year during the term of this Agreement, the Manager shall submit to Corporation for review and approval a proposed annual operating budget for the following Fiscal Year, listing all projected Operating Revenues and Operating Expenses by category and by calendar month, and including a proposed Facility Fee Schedule for City Council approval. This budget shall be subject to the procedures customarily employed in connection with the development, approval, and implementation of operating budgets for the Corporation.

4.7 Budget Approval. Corporation shall promptly review all proposed budgets and amendments thereto and communicate to the Manager any comments or suggested revisions thereto. The parties agree to negotiate all budget matters in good faith and to meet at least every two weeks following submission of the proposed budget, or more often as may be necessary, to resolve any outstanding budget issues. If, however, the parties are unable to reach a final agreement in writing by May 1 of any year, notwithstanding the parties' good faith efforts, the Budget for the following Fiscal Year shall be identical to the Budget then in effect.

4.8 Funding Contingency. Notwithstanding the provisions of Section 4.7 hereof, in the event of the non-appropriation of funds by the City to the Corporation in an amount sufficient to enable the Corporation to make all required payments to Manager under this Agreement, Manager shall have the right to either accept such reduced or insufficient funding or, at Manager's election, to terminate this Agreement by written notice to the Corporation given within sixty (60) days following Manager's receipt of notice of such non-appropriated funding. In the event that all appropriations or funds are restored and fully funded by the City to the Corporation for the operation and maintenance of the Facility after this Agreement has been terminated, pursuant to this Section 4.8, Corporation shall provide written notice thereof to Manager whereupon Manager shall have the first right to enter into a new agreement with Corporation on the same terms and conditions set forth herein. In the event Manager elects to exercise such right and option, Manager and Corporation shall promptly thereafter execute and enter into an amendment to this Agreement reinstating the same to its original terms and conditions. Subject to the appropriation of funds by the City, Corporation shall pay to Manager the Management Fees and all expenses and any other sums due and payable to Manager hereunder through and including the date of termination.

4.9 Shortfall. Manager is responsible for anticipating operating budget shortfalls. If Manager finds that budgeted funds will be insufficient to cover costs in any Fiscal Year, it shall be the obligation of Manager as soon as shortfalls are anticipated to request additional funds from the Corporation and such request shall be made in writing at least thirty (30) days before such funds are needed. A shortfall in and of itself that is not the result of an emergency expenditure does not constitute an emergency for purposes of "emergency expenditures."

ARTICLE 5

FUNDS AND ACCOUNTS

5.1 Operating Fund. After the Operations Start Date, Manager shall collect all Operating Revenues and deposit them in a separate, interest-bearing account maintained by Manager in its name in the Depository (the "Operating Fund"). Manager shall have complete control and authority as to the Operating Fund, subject only to the provisions of this Article 5. Monies in the Operating Fund and any interest thereon shall be applied first to the payment of Management Fees accrued through the end of the prior month and thereafter to any other Operating Expenses then accrued. The balance shall be retained in the Operating Fund as reserve for payment of future Operating Expenses. If, at the end of any Fiscal Year, there shall be a balance in the Operating Fund in an amount in excess of the anticipated Operating Expenses

for the first month of the ensuing year, Manager shall disburse such excess to Corporation on or before the fifteenth (15th) day of such month, subject to the provisions of Section 7.2 below.

5.2 Corporation Funding. In order to provide the working capital necessary to permit Manager to perform its obligations hereunder with respect to Operating Expenses, Corporation will advance funds to Manager, subject to the terms of this Agreement and available budget, for deposit in the Operating Fund as follows: by no later than the first day of each Fiscal Year, Corporation shall advance to Manager twenty-five percent (25%) of the funds budgeted by the City for the Facility for the Budget year then in effect. Additional twenty-five percent advances will be made on a periodic basis so that the Facility's cash flow needs are met.

5.3 No Obligation of Manager to Advance Funds. Corporation is solely responsible for and shall promptly pay, or provide funds to Manager to enable Manager to pay, all Operating Expenses, Emergency Expenditures, and approved Capital Expenditures, and Manager shall not be obligated to make any advance of its own funds to or for the account of Corporation or to pay any sums incurred for the performance of services or goods delivered to the Facility, nor shall Manager be obligated to incur any liability or obligation for the account of Corporation. Notwithstanding anything to the contrary set forth in this Agreement, the Corporation recognizes and agrees that performance by SMG of its responsibilities under this Agreement is in all respects subject to and conditioned upon the provision of funds to SMG for such purposes as hereinafter provided.

ARTICLE 6

POWER AND FUNCTIONS

6.1 Authority of Manager. Manager shall have the exclusive right and authority to exercise, or delegate the exercise of, all rights, powers, and duties conferred or imposed on Manager of this Agreement. The powers of Manager with respect to the Facility shall be plenary, subject only to the limitations expressly set forth in this Agreement.

6.2 Asset Management. The Manager shall have no authority to sell or otherwise dispose of, or to encumber or alienate any personal or real property owned by Corporation or the City. Upon notice from Manager to Corporation of the need to move off-site any movable property that Manager has determined is surplus or unnecessary at the Facility, Corporation will remove such property within three (3) days. Manager shall be obligated to provide Corporation with an accurate annual inventory of all property and non-consumable items located at the Facility with notation of inventory that is no longer in use and cannot be returned to service. A written report regarding stolen or otherwise unaccounted for inventory, including police report number and any other documentation provided by the police, must be made within ten (10) days of Manager becoming aware of the theft or loss.

6.3 Capital Improvements. Except for the Capital Expenditures set forth in the Capital Expenditures Budget and Emergency Expenditures, Manager shall have no authority to

make any material alterations or any capital improvements to the Facility without the prior written consent of the Corporation.

6.4 Contracts. The Manager shall have no authority, without the prior written consent of Corporation, to enter into: (a) any contract for more than the greater of (i) thirty-eight thousand and no/100 dollars (\$38,000.00) or (b) any contract for the provision of goods and/or services to the Facility at any time beyond the expiration date of the term of this Agreement provided, however, that Corporation agrees to cooperate with Manager in connection with the execution of such contracts that would extend beyond the term of this Agreement by executing and delivering agreements with the providers of such goods and services whereby Corporation agrees to honor and observe such contracts following termination of this Agreement. Manager shall have the right to enter into, execute, and deliver contracts with users of the Facility which extend beyond or relate to dates falling after the expiration of the terms of this Agreement. All contracts entered into by Manager shall provide that the same are assignable to Corporation without the vendor's prior consent and, notwithstanding any contrary provision hereof, upon termination of this Agreement for any reason, Manager agrees that Corporation shall have the right to and the Corporation shall assume in writing any or all then outstanding contracts affecting the Facility. In all contractual matters from the date hereof, Manager shall comply with the City's Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program, as described in City Resolution 20071108-127.

6.5 Employees.

a. Employees now or hereafter hired by Manager in connection with the management services provided by Manager shall be employees of Manager and not of Corporation, although the employment costs of such employees (wages, salary, benefits) shall be part of the Operating Expenses. Such employment costs shall be consistent with industry standards in the field of private facility management, at each level of employment. Manager shall have complete and absolute discretion and authority with respect to the number, functions, qualifications, compensation, evaluation and other terms and conditions relating to its employees, subject only to the provisions of Section 4.6 of this Agreement.

b. If there is a vacancy in the Facility's on-site General Manager position,^f Manager shall select the General Manager following consultation with Corporation. The General Manager shall be and remain an employee of the Manager. The General Manager's salary and all other employment costs, including travel to and from meetings, car allowance and other benefits and related employment costs, shall be part of the Budget and Corporation shall reimburse Manager therefore. In the event that Corporation has concerns related to the General Manager, Corporation and Manager shall meet to discuss those concerns and, subject to applicable employment laws with respect to such matter, Manager shall propose to Corporation a plan to address such concerns. If such plan is not satisfactory to the Corporation, the parties shall continue meeting until a mutually agreeable plan is reached.

c. Corporation covenants and agrees that neither it nor its Authorized Representative shall during the term hereof or for a period of twelve (12) months following the expiration or early termination of this Agreement, hire, employ, solicit for hire, or engage in any manner or for any purpose any person who has served as General Manager during the Term of this Agreement, or any other of Manager's "senior personnel." "Senior personnel" shall mean and refer to the three (3) individuals involved in management who are designated by Manager in a written notice to the Corporation as "senior personnel" for purposes of this Agreement.

6.6 Purchase of Supplies and Services. Manager shall have full authority and discretion as to the purchase of all equipment, materials, supplies, and inventories reasonably required by it in the management of the Facility but shall endeavor to make all such purchases at the best price available as known to Manager, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Manager. Manager may not, without the prior written consent of the Corporation, acquire property or services from or otherwise transact business with its Affiliates for any of the goods to be purchased or services to be performed by it under this Agreement.

Manager has advised Corporation that Manager performs facility services similar to those outlined herein for other public assembly facilities. In order to maximize utilization of the Facility, Manager may from time to time book the same event at a number of the facilities it operates. If Manager desires to book events at the Facility while at the same time booking said events under the same contract (or one or more contracts executed concurrently) for other facilities for which Manager is providing services, then before finalizing such contract, Manager shall obtain Corporation's approval over the allocation of such contracts' expenses to the Facility. Similarly, if authorized to acquire business services for the Facility, Manager desires to acquire goods or services in bulk for the Facility and one or more of the other facilities for which Manager performs services, Manager shall first obtain Corporation's approval over the allocation of the costs thereof to Facility. Provided, however, Manager shall not allocate or impose any costs or expenses related to its corporate offices or other facilities to the Facility which are not related to Manager's provisions of management services to the Facility. Provided, Corporation's approval under this Section 6.6 shall not be unreasonably withheld or delayed.

6.7 Settlement of Claims. Manager has been advised by Corporation of (and Corporation shall continually keep Manager apprised of) Corporation's procedures and requirements in respect to settlement of third party claims filed against Corporation or with respect to the Facility. Manager agrees to comply with such settlement claims and procedures as it has been advised of in writing by Corporation so long as such settlement procedures do not delay a proposed settlement by Manager which delay may result in the assessment of civil or criminal penalty against Manager. Manager and Corporation agree to cause their respective legal counsels to coordinate with one another in connection with the settlement of claims, all costs and expenses thereof, including the settlement thereof, to be deemed an Operating Expense if the Corporation agrees to such settlement (unless covered by insurance, in which case the Corporation shall be deemed to consent) in accordance with the terms and provisions of this Agreement.

6.8 Concession and Service Contracts. Manager shall obtain the Corporation's prior approval of the standard contract form, and of any material variations thereto, to be entered into by and between Manager and third parties for the provision of the food and beverage concession or services for the Facility. The parties agree and acknowledge, however, that Corporation's approval authority is limited to the terms and conditions of Manager's standard contract form, and that Corporation shall not have the right to select or approve any specific concessionaire.

6.9 Corporation's Covenant Against Interference. Corporation covenants and agrees that neither it nor its Authorized Representative shall initiate or intervene in any manner whatsoever in negotiations with existing or prospective lessees, users, advertisers, service contractors, or other persons doing business or seeking to do business with the Facility nor shall the Corporation or its Authorized Representative solicit, request or seek any services, contributions, gifts, favors, tickets, gratuities, or other benefits from Manager or any person doing business with the Facility.

ARTICLE 7

FEES AND EXPENSES

7.1 Annual Management Fees. For services to be performed by Manager, Corporation shall pay to Manager, commencing with the Effective Date of this Agreement, a base fee of \$100,000.00 per Fiscal Year, such sum to be paid, in each year, in twelve (12) equal installments on or before the first business day of each month throughout the remaining Term hereof. The fee shall be prorated for any partial month during such period.

7.2 Performance Compensation. In addition to the compensation payable to Manager under Section 7.1, following the first anniversary of the Operations Start Date, Corporation shall pay to Manager, annually in arrears, on or before the thirtieth (30th) day following the date on which the annual audit report for the Fiscal Year in question has been delivered, an amount equal to: twenty-five percent (25%) of the favorable improvement in the cost estimates for such Fiscal Year, provided, however, in no event shall the amount payable to Manager under this Section 7.2 exceed \$25,000 in any Fiscal Year. For example, in the event that the Fiscal Year Budget for the Facility showed a net loss of (\$675,000) and an actual loss (per the Audit referenced in Section 4.3) of (\$625,000) providing an improvement of \$50,000 for such Fiscal Year, then the performance compensation payable to SMG under this Section 7.2 would equal \$12,500 (i.e. 25% of such improvement). In table format, the above example would read as follows:

Fiscal Year Budget:	(\$675,000)
Actual NOL (Audited):	(\$625,000)
Improvement:	\$50,000
Performance Compensation (25% of Improvement)	\$12,500

For purposes of this Section 7.2, Emergency Expenditures shall be excluded from the calculation of Operating Expenses. Performance compensation shall be negotiated for any renewal term.

ARTICLE 8

INSURANCE

8.1 Insurance to be Maintained by Manager. Throughout the term of this Agreement, Manager shall carry insurance in the types and amounts specified below. Manager agrees to furnish Corporation certified copies of all policies as evidence thereof:

a. All risk coverage including, but not limited to, flood, fire, wind, hail, theft, vandalism, and malicious mischief on the Facility and City-owned or Corporation-owned contents contained within the Facility. The coverage shall be at replacement cost with a 100% coinsurance clause and the Corporation shall be shown as a mortgagee, and the Corporation and City shall be loss payees on the policy.

b. Comprehensive Electronic Data Processing coverage for hardware, software, and related equipment located at the Facility, at replacement cost with a 100% coinsurance clause. The policy shall provide coverage for interruption of power and electrical disturbance.

c. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Worker's Compensation Act, as amended from time to time, and minimum policy limits for employers' liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee. The policies shall contain these endorsements in favor of the Corporation and City:

1. Waiver of Subrogation
2. 30 day Notice of Cancellation

d. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$10,000,000. Coverage shall include, at a minimum, Personal and Advertising Injury Liability coverage and Products and Completed Operations coverage with a separate aggregate limit of \$5,000,000. The policy shall contain the following provisions:

1. Blanket contractual liability coverage
2. Corporation and City indicated as additional insured
3. 30 day notice of cancellation in favor of the Corporation and the City
4. Waiver of transfer right of recovery against others in favor of the Corporation and of the City
5. Aggregate limits of insurance per location endorsement
6. Independent contractors' coverage

e. Security guard liability coverage with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. Personal injury coverages, including coverage for false arrest, shall be provided. The policy shall contain the following provisions:

1. Corporation and City named as additional insureds
2. 30 day notice of cancellation in favor of the Corporation and City

f. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of Corporation and City:

1. Waiver of Subrogation endorsement
2. 30 day notice of cancellation endorsement

g. Errors and Omissions coverage, not less than \$500,000 per claim, shall be in place for protection from claims arising out of the performance of professional services. Coverage shall be continuous for not less than 24 months following termination of the Agreement, including any renewals. Coverage, including any renewals, shall have a retroactive date coincident with or prior to the date of this Agreement.

h. Commercial Crime insurance is required for all losses emanating from the handling of Corporation or City checks or cash including but not limited to losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds. This policy shall be written for a minimum limit of \$1,000,000.

i. General Requirements.

Manager agrees not to commence work until it has obtained the required insurance as described in this Section 8.1, and until such insurance has been reviewed by Corporation and City. So long as Corporation provides adequate funding therefore, Manager shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement or as required under this Agreement.

Insurance is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B + VII or better. Workers compensation coverage written by the Texas Workers Compensation Fund shall be acceptable. Professional liability and Security Guard liability coverage shall be written by companies acceptable to the Corporation and City.

All endorsements naming the City, such as additional insured, waiver, and notice of cancellation endorsement, as well as insurance certificates, shall indicate: City of Austin, Parks and Recreation Department, P.O. Box 1088, Austin, Texas 78767-8828 ATTN: Director of PARD. If this Agreement is assigned, these endorsement requirements shall apply to the assignee and Manager agrees to notify any assignee or proposed assignee of such requirements.

The "other" insurance clause shall not apply to the Corporation or City where Corporation or City, as applicable, is an additional insured shown on any policy. It is intended that policies required in the Agreement shall be considered primary coverage as applicable.

If insurance policies are not written for the amounts specified above, the Manager shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

Corporation shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, make any reasonable request for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either Corporation or Manager or the underwriter on any such policies.

Corporation and City reserve the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments, so long as the excess cost thereof is funded by the Corporation and properly included in the Budget, to insurance coverage, limits, and exclusions when deemed necessary and prudent by Corporation and City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company.

8.2. Indemnity.

a. Manager shall indemnify, defend, and hold harmless ("Indemnification") the Corporation and the City and their respective officers, agents, employees, directors, and shareholders ("the Indemnified Parties") of, from, and against any and all claims, demands, suits, liabilities, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs of court), including claims for personal injury ("Claim or Suit"), that any or all of the Indemnified Parties may hereafter suffer or incur in connection with, relate to or in any way, directly or indirectly, arising out of the non-performance by Manager or its representatives, agents, employees, or subcontractors, of its obligations under this Agreement.

b. The Corporation will not look to the Manager for Indemnification if the Manager has not caused the damage or injury that is the subject of a Claim or Suit.

8.3 Waiver of Subrogation. The parties release each other and their respective Authorized Representatives, from any claims for damage to any person, the Facility, or any fixtures, personal property, improvements, and alterations of either party in or about the Facility that are caused by or result from risks insured against under any insurance policies required to be carried by the parties under this Agreement, whether or not the cause thereof results from the negligence (whether ordinary or gross of any party to this Agreement). The parties agree to cause the issuers of the insurance policies required to be maintained by them hereunder to include waivers of the rights of recovery and subrogation.

8.4 Survival. All obligations of the parties under this Article 8 shall survive the expiration or early termination of this Agreement.

ARTICLE 9

TERMINATION

9.1 Termination for Cause. Either party may terminate this Agreement for cause by written notice upon the occurrence of a Material Breach, as defined in Section 10.1, by the other party and the failure of the breaching party to cure the Material Breach in accordance with Section 10.1.

9.2 Automatic Termination. This Agreement shall terminate automatically, without action or notice by either party, upon the occurrence of any of the following: Manager files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other state or federal insolvency act or law not dismissed within sixty (60) days thereof, or any action by Manager indicating its consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors, the inability of Manager or its admission in writing of its inability to pay its debt as they mature, or the liquidation, dissolution or termination of the corporation or partnership existence of Manager or the failure of the City of Austin to appropriate funds sufficient to meet the budget for the succeeding year, subject to the provisions of Sections 4.7 and 4.8.

9.3 Surrender of Improvements. Upon expiration or termination of this Agreement, Manager shall promptly surrender the Facility to Corporation, returning all balances in the Operating Fund to Corporation, leaving equipment, supplies, manuals, books, records, and, inventories that are the property of Corporation or from funds made available by Corporation, and Corporation shall immediately make all payments due Manager as set forth in this Agreement. Manager shall also deliver all documents, records, and other non-proprietary work product generated by Manager for Corporation during the term of this Agreement.

ARTICLE 10

DEFAULT AND REMEDIES

10.1 Material Breach. Each of the following shall constitute a "Material Breach" under this Agreement:

- a. Failure to pay when due any amount required to be paid under this Agreement, if the failure continues for thirty (30) days after written notice has been given to the breaching party;
- b. Failure to perform any other obligation under this Agreement, if the failure to perform is not cured within thirty (30) days after written notice has been given to the

breaching party, except that if the breach cannot reasonably be cured within thirty (30) days, a Material Breach shall not be deemed to have occurred if the breaching party begins to cure the breach within the thirty (30) day period and diligently and in good faith continues to pursue the cure of the breach.

10.2 Interest on Delinquent Payments. Interest shall accrue on any sums not paid when due from the date on which a default notice is given until paid at an annual rate equal to the lesser of 12% per annum or the maximum non-usurious rate of interest permitted by applicable law.

10.3 Notice of Breach. Each party shall promptly notify the other party in writing of any act or omission believed to be a breach of this Agreement. In order to be effective for purposes of Section 10.1 and 10.2, a notice of a breach must state that it is a notice of breach and must specify the act or omission alleged to constitute a breach of this Agreement.

10.4 Rights of Non-Breaching Party. If a Material Breach occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies which are not exclusive but cumulative in addition to any other remedies now or later allowed by law or in equity:

a. The right to cure, at the breaching party's cost and expense, any Material Breach and recover such costs together with interest thereon as provided in Section 10.2;

b. The right to sue to collect any sums not paid when due, together with interest accrued thereon as provided in Section 10.2;

c. The right to sue to collect damages and attorneys fees suffered by the non-breaching party by reason of the occurrence of a Material Breach other than breach in the payment of money;

d. The right to terminate this Agreement; or

e. The right to injunctive relief including seeking specific performance of the breached obligation. †

10.5 Inaction. Inaction on a breach of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

ARTICLE 11

MISCELLANEOUS

11.1 Notices. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice, or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with

receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, or when faxed, telegraphed, or telexed to a party, at such party's address set forth below or at such other address as a party may designate by notice given to the other in accordance with the foregoing.

To Corporation:

President, Austin-Rosewood Community Development Corporation
c/o Director, Parks and Recreation Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

With a copy to:

City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

To Manager:

President, SMG
300 Four Falls Corporate Center
300 Conshohocken State Road
West Conshohocken, PA 19428

With a copy to:

Facility General Manager
Millennium Youth Entertainment Complex
1156 Hargrave St.
Austin, TX 78702

Notice shall, in all events, be effective upon receipt by the addressee except that notice by facsimile electronic transmission shall, if received after 5:00 p.m. on any day which is not a business day, be deemed received on the next following business day.

11.2 Amendments. This Agreement may be amended only by the written consent of the parties.

11.3 Title and Captions. All articles or section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this

Agreement. Except as specifically otherwise provided, reference to "Articles," "Sections," and "Schedules" are to be Articles and Sections of and Schedules to this Agreement.

11.4 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

11.5 Severability. Each provision of this Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

11.6 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, successors, and assigns but this provision shall not be deemed to permit any assignment by a party of any of his rights or obligations under this Agreement except as expressly provided herein.

11.7 Assignment. Manager shall not voluntarily assign or encumber its interest in this Agreement without first obtaining Corporation's written consent, provided, however, that such consent shall not be withheld or delayed unreasonably. Any assignment or encumbrance without Corporation's consent shall be void. Manager shall, however, have the right without Corporation's consent, to assign this Agreement as follows, provided the assignee has net worth comparable to Manager's net worth:

- a. to a general or limited partnership if
 1. Manager is a general partner and
 2. the partnership executes an agreement required by Corporation assuming Manager's obligation;
- b. to a corporation if
 1. Manager or its principals own the majority of the outstanding stock of the corporation entitled to vote on the election of directors and
 2. the corporation executes an agreement required by Corporation assuming Manager's obligations; or
- c. to a corporation with which Manager has merged or consolidated, to any principal of Manager or any parent or subsidiary of any such principal or of the Manager, or to a purchaser of all or substantially all of Manager's assets, if the assignee executes an agreement required by Corporation assuming Manager's obligations under this Agreement.

The provisions of this Section 11.7 shall not prohibit or restrict Manager's entering into subleases, contracts, concessions, or licenses for the operation of any portion of the Facility or of the business conducted in the Facility, subject to the terms of this Agreement. Furthermore, Manager shall have the right to pledge its rights to receive the fees to be paid Manager hereunder to any bank, insurance company, savings association, federal savings bank, or other institutional lender providing credit to Manager or any of its Affiliates.

11.8 Further Action. Each party, within thirty (30) days after notice from the other party, shall execute and deliver to the party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, and the other party is not, to the best of the party's knowledge, in default under this Agreement or stating the exact nature of any default alleged to have occurred.

11.9 Entire Agreement. This Agreement, including the attached exhibits, contains the entire agreement of the parties and supersedes all prior and contemporaneous agreement and understandings, oral or otherwise, among the parties with respect to the matters contained in this Agreement and may not be modified or amended except as set forth in this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original, but all of such counterparts together shall constitute but one and the same instrument, binding upon the parties, notwithstanding that all of the parties may not have executed the same counterpart.

11.11 Applicable Law: Attorneys' Fees. This Agreement calls for performance and shall be performable in Travis County, Texas and shall be governed by, and construed and enforced in accordance with the laws of the State of Texas (without giving effect to principles of conflicts of law thereof), and venue for any dispute arising hereunder shall be exclusively in the state courts of Travis County, Texas. The prevailing party in any litigation or other similar proceeding relating hereto, or for the enforcement of the provisions hereof, shall be entitled to recover the reasonable attorneys' fees and other costs incurred by the prevailing party in such action.

11.12 Force Majeure. Neither party hereto shall be liable or responsible to the other party for delay, damage, loss, failure, or any inability to perform any of its respective obligations, covenants, and conditions cause by "Force Majeure" if notice is provided to the other party within ten (10) days of actual knowledge of the event of Force Majeure that such party is unable to perform. The term "Force Majeure" as used in this Agreement shall include the following: an act of God, strikes, lock-outs, war, riot explosions, industrial disturbances, acts or restraints of any government authority (civil or military), acts of the public enemy, laws, rules and regulations of Governmental Entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), civil commotion, blockades, insurrections, acts of terrorists or vandals, earthquakes, landslides, sinkholes, hurricanes, washouts, any material interruption of utilities at the Facility not willfully caused by a party hereto, a confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, epidemics, lightening, fire or other casualty, storm, floods, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within control of the parties hereto and which by the exercise of due diligence could not be reasonably prevented or overcome. In no event, however, shall the failure to pay any liquidated sum of money by either party be an event of Force Majeure.

11.13 Confidential/Proprietary Information. Manager understands and acknowledges that both Corporation and City are subject to the Texas public information and open meetings laws and regulations, and that the ability of Corporation and City to maintain the confidentiality

of any information or data received pursuant to this Agreement will be subject to such laws and regulations. City shall notify Manager promptly in writing upon receipt by the Corporation or City of an open records or other request for information provided by or relating to Manager or the Facility.

11.14 No Third Party Beneficiary. Any agreement to perform any obligation or pay any amount and any assumption of liability herein contained, express or implied, shall be only for the benefit of Manager, Corporation, and the respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements and assumptions shall not inure to the benefit of any obligee, whomever, it being the intention of the undersigned that no one shall be or be deemed to be a third party beneficiary of this Agreement.

11.15 Gratuities and Kickbacks. It shall be a breach of Manager's obligations hereunder to offer, give, or agree to give any employee of Corporation or City or former employee of Corporation a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of any purchase request, influence in the consent of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to or solicitation of any contract or proposal therefore by Manager from Corporation or City.

11.16 Limitation of Liability.

(a) Notwithstanding any contrary provision hereof, Corporation agrees that no partner, co-venturer, employer, agent, director, officer, shareholder, or Affiliate of Manager shall be personally liable to Corporation or anyone claiming by, through or under Corporation solely by reason of any default by Manager under this Agreement, any obligation of Manager to Corporation, or for any amount that may become due to Corporation by Manager under the terms of this Agreement or otherwise.

(b) Notwithstanding any contrary provision hereof, Manager agrees that no employee, official, agent, or director of the Corporation shall be personally liable to the Manager or anyone claiming by, through or under the Manager solely by reason of any default by the Corporation under this Agreement, any obligation of Corporation to Manager, or for any amount that may become due to Manager by Corporation under the terms of this Agreement or otherwise.

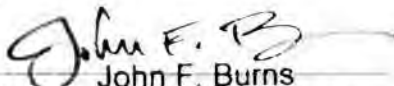
11.17 No Representation as to Operations Results. Corporation recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of the Manager. Manager has made no and disclaims any purported or actual representation or warranty as to the financial results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues or the accuracy of its projections and estimates thereof. Corporation recognizes and accepts that all Budgets and projections represent Manager's

estimate of the expected expenditures and revenues and that Manager is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected; this does not waive Manager's responsibilities to keep Corporation apprised monthly of fluctuations in expenditures and revenues and to plan accordingly in accordance with the terms and conditions of this Agreement.

**AUSTIN-ROSEWOOD COMMUNITY
DEVELOPMENT CORPORATION**

By: _____
Name: _____
Title: _____

SMG

By:  _____
Name: John F. Burns
Title: Chief Financial Officer